

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	14 December 2016
Title:	Dedication of public footpath and cycling rights at Bartons Road, Havant, by Wyevale Garden Centres
Reference:	7975
Report From:	Director of Culture, Communities and Business Services

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1 Executive Summary

- 1.1 The Countryside Access Team has received an offer from Wyevale Garden Centres Limited to dedicate public footpath and cycling rights on a parcel of land that lies adjacent to its Havant branch. The route will link Bartons Road, in West Leigh, Havant, to an area of land which is the subject of a planning application to build 175 houses.
- 1.2 This paper seeks Member authority for the County Council to enter into an agreement for this dedication.

2 Legal framework for the decision

HIGHWAYS ACT 1980: section 25: creation of a 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 over land in their area.

Section 25 does not allow for the specific creation of cycling rights, and so this must be dealt with by virtue of a **common law dedication**. This allows for the dedication of public cycling rights by the owner of the freehold of the land in question, with an acceptance of the dedication by the County Council as highway authority, on behalf of the public. The dedication would mean the public 'cycleway' would be publicly maintainable by Hampshire County Council (the Highway Authority).

3 Landowner

3.1 Wyevale Garden Centres Limited

Wyevale Garden Centres
Syon Park
London Road
Brentford
Middlesex
TW8 8JF

4 Description of the Route (please refer to the map attached to this report)

- 4.1 An enclosed earth path running between boundaries approximately 3.2 metres apart commencing at a junction with Bartons Road (Point A on the Committee Map) and running in a generally southerly direction to meet an open field (Point B). A total length of 90 metres.
- 4.2 The route is to be surfaced for its full width of 3.2 metres between its boundaries. It is also proposed that the route will be lit, and safety barriers installed at its junction with Bartons Road. The route is to be publicly adopted upon the completion of the works and maintained thereafter by Hampshire Highways.

5 Background

- 5.1 Presently the path is well used by dog walkers to access Japonica Way and the proposed development site. Public footpath rights were originally dedicated on the route by Wyevale Garden Centres Limited by virtue of a dedication agreement with Havant Borough Council in 2004. However, the agreement was not properly completed, and the advice from the County Council's solicitors is that the deed has no legal effect, and cannot be relied upon. The County Council was not party to the agreement, nor was it made aware of its existence at the time it was drawn up. The matter has been revisited now because of the need to provide a sustainable link for local walkers and cyclists upon completion of the new housing development.
- 5.2 Upon completion of the dedication, it is proposed that the route will be surfaced, and other works will include the installation of safety barriers and lighting. Funding for these works will be derived from Section 106 money linked to the proposed development at Bartons Road. In order to undertake the proposed works, the route needs to be recorded as a public highway.

6 Consultations with Other Bodies

6.1 Havant Borough Council

Havant Borough Council supports the proposed dedication, which *"links into a allocated housing site in our Local Plan and improves sustainable access options."*

It observes that it would be appropriate to seek guidance from the County Ecologist to ensure that the proposed lighting is appropriate in relation to both the users of the route and ecological interests (including bats).

6.2 County Councillor Ray Bolton – Local Member

Councillor Bolton is aware of the application.

6.3 HCC Area Countryside Access Manager

The Area Countryside Access Manager is aware of the proposal and has raised no objection.

6.4 Cycling UK

“To have a footpath with cycling rights on this path would be a substantial improvement to residents especially, as you say, there are proposals to develop the area to the south. The track should fit in well with Havant's developing cycle network. The proposal is supported. Its agreed that a safety barrier may be necessary at the Barton Road end but its hoped that its a lot better that the present structure that could cause injury.”

6.5 At the time of writing, no other consultees (which included the Ramblers and the Open Spaces Society) have responded.

7 Criteria for Assessment of the Proposal of a dedication under the Highways Act

7.1 Section 25 of the Highways Act 1980 gives the County Council, as the Highway Authority, the power to enter into an agreement with any person with the necessary power to dedicate a footpath or bridleway over land, and to take all the required actions to ensure that the footpath or bridleway is dedicated in accordance with that agreement.

7.2 It is within the gift of any landowner to dedicate any rights that they deem fit. The County Council has the power, in its capacity as Highway Authority, to accept the dedication of public rights at common law.

8 Financial Implications

8.1 As stated above, it is proposed that after the dedication is completed, the route will be surfaced, with lighting and safety barriers installed to render the route suitable for use by walkers and cyclists. These works will be fully funded by developer contributions linked to the proposed development of the area to the south. This funding will also cover necessary signage and waymarking, as well as a commuted sum for future maintenance of the route. Ongoing maintenance will be overseen by Hampshire Highways.

8.2 Under section 25(6) of the Highways Act, the County Council must give notice of the dedication by the public of an advertisement in a local newspaper, which will incur a small associated expense.

9 Recommendation:

- 9.1 That the County Council accepts the offer to dedicate public footpath and cycling rights between points A-B on the Committee Map attached to this report.

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: Authority is needed for the County Council to enter into a dedication agreement with another body.	

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.)

Document

Dedication of public footpath and cycling rights at Bartons Road, Havant by Wyevale Garden Centres Limited

Location

Countryside Access Team Office
Castle Avenue
High Street
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:

- 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:

The route will be flat and step-free throughout, with no restrictions for those with mobility impairments. It will be metalled, which will ensure a consistent surface throughout.

2. Crime Prevention (under Section 17):

2.1. The route is already well-used by the local community, and so the proposed dedication is unlikely to have any impact with regard to crime prevention.

3. Environmental:

3.1 It is arguable that the dedication will have a positive impact in this area, given that it will encourage use by walkers and cyclists, possibly reducing vehicular use as a result.