

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Executive Member for Culture and Recreation
Date:	22 April 2010
Title:	Determination of proposal from two landowners to provide an alternative public path and to exchange land with the County Council at Burgate, Fordingbridge
Reference:	1486
Report From:	Director of Culture, Communities and Rural Affairs

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1. Executive Summary

- 1.1. The purpose of this paper is to determine the County Council's response to an offer from two landowners to provide an alternative public path at Burgate Cross in Fordingbridge. If the offer were to be accepted then the proposal would also include an exchange of land between the landowners and the County Council. This report sets out the facts of the case to enable the Executive Member to come to an informed decision. It is recommended that the offer be declined.
- 1.2. This paper seeks to explain how this offer came to be made, the implications for public access and the financial implications for the County Council in either accepting or declining the offer. It also sets out the Department's objective in trying to secure improved access to the countryside in the locality.

2. Contextual information

- 2.1. The County Council owns a two mile section of dismantled railway line, between Burgate Cross and South Charford, as shown by an orange line between points A-B-C-D on Map 1 attached to this report. The majority of this land is in Breamore Parish with the southern 400 metres in the Town of Fordingbridge. The railway was built in 1865 to connect Salisbury with Wimborne. The line was closed to rail traffic in 1964 and the land bought by the County Council in 1971 for use as a by-pass for Breamore Village. This project was abandoned in the last decade and, on 31 October 2006, the land was transferred from Highways to Countryside, for use as a bridleway, by a decision made by the Executive Member for Policy and Resources. This transfer was made in recognition that the line had potential in providing improved access to the countryside for walkers, cyclists and horse riders.

- 2.2. If used as a public path the railway line greatly enhances the opportunity for circular routes in the locality. For example, this could include the New Forest and Avon Valley Path on the east side of the River Avon and the numerous footpaths in Breamore on the west side of the valley. Without the railway line, circular walks are either more limited, or so long that few people would attempt to use them. Use of the line avoids the necessity of using the roadside verge to make connections. There is no footway by the side of the Salisbury Road except for a limited length through Breamore Village and going southwards from Burgate Cross to Fordingbridge. In its own right the railway offers local residents the opportunity to enjoy the countryside at their back door without having to use, or be close to, busy roads.
- 2.3. In the summer of 2008 work started on the northern half of the line to make it accessible for walkers. This work included consultation with interested parties, clearance of vegetation by volunteers and the County Council's own Access Team, the clearance of spoil heaps at Breamore Station and the construction of a new bridge over a major water course. This work was financially supported by the New Forest National Park Authority who paid for most of the cost of the bridge. The volunteers were drawn from the Ringwood & Fordingbridge Footpath Society and residents of Breamore Parish. The northern half of the line between Footpath 1 and Footpath 3, (points C-D) has, very recently, been opened for public use.
- 2.4. In 2009 Officers turned their attention to the southern half of the line. As a result of consultations with interested parties, two owners of land adjoining the railway at the southern end made a formal proposal regarding the provision of an alternative public path between points A and B. Both landowners have concerns about the impact that the path proposed by the County Council would have on their interests and put forward another route as shown by a red line, between points A1 and B, on Map 2 with this report. Dr Milsted was primarily concerned about the impact that the path would have on the security and privacy of his property at Moorland House. Mr Forbes was primarily concerned in protecting the nature conservation interest of his land to the east of the line, some of which is designated a Site of Special Scientific Interest (SSSI).
- 2.5. This offer was given serious consideration because it provided a route, at no expense to the County Council, that connected directly with an existing bus lay-by on the eastern side of Salisbury Road. This lay-by is directly opposite Fryern Court Road, a quiet lane that enables walkers to connect with other routes. It is the location which would seem to provide the best crossing point of the main road. At the time there was a potential problem in connecting Fryern Court Road with the railway line because of the existence of a thin strip of privately owned land between the road and line, shown in blue on Map 2. The railway land 'overshoots' the bus stop by about 55 metres. This no longer presents a problem because the public has a right of access across the blue land as explained at paragraph 6.10 in this report.

3. Finance

- 3.1. a) The financial implications of the proposal, in the short term, are neutral. The landowners have proposed building path A1-B at their own expense to the specification required for a bridleway, that is with a minimum width of 3.0 metres and with a firm and even gravel or hoggin surface. There would therefore be no cost to the County Council in constructing the alternative route.
b) The County Council owned railway line is currently capable of being used as a footpath/bridleway without notable expenditure.
- 3.2. Both routes might have to be fenced. The route along the road has a close boarded fence that would screen users of the alternative route from the road traffic. This fence is in poor condition and is unlikely to last more than five years. A replacement fence, of a similar design, would not be cheap. There might be an obligation on the part of the County Council to reinstate the railway boundary fence where the line passes between the two parts of the property known as Moorland House. This would also require significant expenditure.
- 3.3. a) There is a longer term financial implication in taking on ownership and responsibility for the alternative route. At present the land consists of the margins of three disused watercress beds, annotated as 'Ponds' on Map 2. For the most part, alongside the road, the land is low lying and wet and it needs to be built up with imported material to accommodate the bridleway. This would inevitably involve the construction of retaining walls of some description, together with culverts to allow water from the roadside ditches to flow underneath the path and into drainage channels. At some stage, the retaining walls and culverts will have to be repaired and/or replaced, and this would be a major task.
b) There are no serious long term financial implications in maintaining the railway line as a public path. Although some of the ballast was removed when the railway closed, the surface of the line is still solid, dry and above the adjoining flood plain. The surface has remained intact for 46 years since closure, without any repairs, and there is no reason to suspect that it would be vulnerable to erosion or other factors causing deterioration.
- 3.4. If accepted the proposal would involve the exchange of land. The County Council would take on the alternative route along the road and the two landowners would gain ownership of the railway line. The amounts of land in question are, for the alternative route, about 1,000 square metres and for the railway line approximately 5,600 square metres. The landowners would gain a significant area of land that would also unite their land holdings on both sides of the railway.

4. Performance

- 4.1. The establishment of a public path along the railway line would fulfil one of the aims of the Countryside Access Plan (CAP) for the New Forest and south-west Hampshire to "Provide, maintain and promote good quality

routes that link town and countryside.” The objective to provide a route is achievable whichever path is chosen at the southern end, but the railway line offers a route that is of a better quality and can be more easily maintained than the alternative put forward by the landowners.

5. Other key issues – description of land

- 5.1. The railway line between points A and B on Map 1 is about 400 metres in length with a width varying between 11.0 and 17.0 metres. The route is defined by the old railway fence, but in many places this has broken down and no longer serves as an effective barrier. However, running along the eastern boundary of the line, there is a deep, water-filled ditch which effectively separates the County Council’s land from that to the east. The lower part of the railway line between A-Z was, until recently, overgrown with vegetation, but this has now been cleared to enable a proper inspection of the site. The section between Z and B is mostly free of vegetation as this land has been used as a garden by the adjoining landowners under licence from the County Council.
- 5.2. The centre line of the old railway is raised above the surrounding land and provides a firm and level surface of, at least, four metres in width. The route is capable of being used as a public path without significant effort or expenditure. It only requires the removal of three fences and one locked gate across the line, plus the lopping of tree branches, to make it accessible and useable to the public.
- 5.3. Between points A-Z the land on both sides of the line is in the ownership of Mr Forbes who is one of the landowners party to the proposal. His ownership includes the southernmost pond and the thin strip of land between line and road. The proposed alternative path would run through the margin of this pond. This owner does not have a licence or lease for any part of the line, but he does have a private right of access, for all purposes, over County Council land on the route marked in brown on Map 2, between points Y-Z.
- 5.4. The land on either side of section Z-B is in the ownership of the other landowners who are party to this proposal, Dr and Mrs Milsted, at Moorland House. Access to their dwelling is via a private right of way across County Council land as shown in brown on Map 2, between points W and X. The property consists of a house, garden, outbuildings and land on the east of the line and two ponds with thin strips of surrounding land on the west side of the line. The proposed alternative path would run along low-lying land between the western boundary fence and the margins of the two ponds.
- 5.5. Dr and Mrs Milsted purchased their property on 28 September 2006. On 11 October 2006 County Estates Practice wrote to them explaining that the County Council intended to use the line for a footpath or bridleway, although no timescale for the proposal was given. The letter went on to say that the previous occupants had held part of the line under a garden licence from HCC and offered the same facility to the Milsteds. Dr and Mrs Milsted entered into an agreement with the County Council to utilise a section of

land as a garden on 3 May 2007. This garden licence has subsequently been renewed and the line has been kept mostly free of vegetation.

- 5.6. On 15 July 2009 notice was given by the County Council, before the alternative path proposal was made, to terminate the garden licence with effect from 31 December 2009. This notice was challenged by the Milsteds, through their solicitors, and this issue was the subject of correspondence between legal representatives on both sides. A further notice to terminate the licence, with effect from 12 May 2010, was issued on 3 March of this year.

6. Consultations with interested parties

- 6.1. A consultation letter was sent to interested parties on 6 November 2009. A draft of this letter was sent to the two landowners beforehand and, on receipt of their comments, some changes were made to the contents at their request. The County Council has received responses from the bodies listed below. Extracts from their correspondence are included in this report where appropriate. The full letters are attached as an appendix to this report.

6.2. Breamore Parish Council

“The Parish Council considered this issue at their meeting on 7 December. The Council unanimously rejected the alternative proposals put forward by the two landowners. The Council has previously fought hard to protect the principle of the ‘linearity’ of the proposed footpath at other locations and it was felt that this principle should be maintained at the southern end.”

6.3. Fordingbridge Town Council

“Members agreed at their last planning meeting to give their support to the original footpath route along the old railway line. This was unanimously agreed.”

6.4. New Forest District Council

Councillor Mike Shand of Fordingbridge has responded in his capacity as the local district member. Although originally supportive of the alternative route, Councillor Shand altered his views following a site visit and spoke in favour of keeping the path on the railway line at a meeting of Fordingbridge Town Council. His views are contained in e-mail correspondence with the landowners which is not suitable for reproduction with this report.

6.5. Local Member – Councillor E Heron

“Whilst I do not accept many of the arguments put forward by the two landowners, I would support the alternative route...with a couple of conditions. Firstly, they must cover all costs of any works required to put the footpath in place and all legal and other costs for any land swap. Secondly, we must have an agreement from the landowners binding them and any successors, that they will not erect any fencing or barrier that will obscure any views eastwards from the path.”

6.6. New Forest National Park Authority

The letter is signed by the Countryside Access Officer and reads in part:

“The National Park Authority strongly supports the use of the dismantled railway line between Burgate and South Charford as a public path. In my opinion, it would not appear to be in the interest of the public to alter the Breamore Railway line path from the route of the disused railway to that which has been proposed as an alternative.”

6.7. Ringwood & Fordingbridge Footpath Society

“We welcome the establishment of a footpath throughout the section of the disused railway track bed between Burgate and South Charford. However, we would not support deviating the route of the footpath from that previously used by the railway. The historic feature of the railway should be maintained unless it can be shown that it would be impracticable to do so. We refute the stated benefits to walkers of the proposed diversion and the detrimental effects of the original route.”

6.8. British Horse Society

“I agree...that the best point to cross the A338 is from the bus stop lay-by to Fryern Court Road and the alternative proposal appears to be the best way of achieving this, particularly as the landowners are willing to pay to construct and maintain this. The dismantled railway at this point is an overgrown bog which would be very expensive to clear and surface, and it would require an extra 55m of highway margin to reach the crossing point.”

NB: The landowners have not offered to permanently maintain the alternative path. The railway is not an “overgrown bog”; the surface is completely dry and firm at all seasons and has now been cleared of undergrowth. The “extra 55 metres” are no longer required as explained in paragraph 6.10.

6.9. Natural England

Natural England has no objection to use of the railway line as a public path, but has not expressed a preference for either of the alternative paths at the southern end.

6.10 Environment Department

Hampshire Highways has provided documentary evidence regarding the extent of the public highway in the locality of Burgate Cross. It was originally assumed that the highway extended only as far as the roadside fence. However, it transpires that a strip of land between the road and the railway was dedicated as public highway through an agreement with a previous landowner dated 1969 and shown in blue on Map 2. It is believed that this was connected with the plan to build the by-pass. This has important implications in that it enables the Countryside Service to establish a public path over any route between the line and road, between the letters A and Y on Map 2, a distance of 175 metres, without permission or authority from any other body. This also includes the southernmost ‘Pond’, although the Countryside Service would not be inclined to use that area. The Development Control Officer within the Environment Department has also suggested that planning permission would be required for the importation of material to construct the alternative path. The issues to be considered as

part of this application would include; type of materials to be used, lorry movements and effect on ecology.

6.11 HCC Countryside Service Conservation Officer

In consideration of the two proposed routes at the southern end of Breamore Rail path in terms of the conservation value and the impact on biodiversity.

Route on the existing rail bed

Clearance of vegetation along the route will need to be timed to avoid any impact on breeding birds and with due consideration to European Protected Species. However, such work should not have a long term, adverse impact on the biodiversity. The rail bed is unlikely to require the importation of large amounts of material. With active management of the route and adjacent trees and scrub, the biodiversity value may be enhanced.

Alternative route adjacent to the road

Clearance of vegetation along the route will need to be timed to avoid any impact on breeding birds and with due consideration to European Protected Species. This route lies at the edge of and within derelict watercress beds. In some places, with seasonal drawdown on the edge and freshwater springs, this area is likely to contain a high diversity of species of fauna and flora. In order to create a suitable route in this area the importation of material would either adversely affect in the long term, or destroy its current biodiversity value.

6.12 HCC Area Countryside Access Team

The Southern Area Countryside Team are responsible for protecting and maintaining all public, recreational paths in the New Forest. The memo reads, in part:

“We believe that the existing section of the dismantled railway line...provides the more preferential route to be used as a Public Footpath or Permissive Bridleway. Barring vegetation clearance [now mostly done] it requires no significant ground works to open up this route for use. Further long-term maintenance would be minimal given it is an established, raised surface ...designed to carry significantly heavier traffic.”

The memo goes on to raise three concerns about the alternative route. They are: viability of building a bridleway across a water-logged area, proximity of users to main road and loss of character compared to railway line.

7. Future direction

- 7.1 If the southern end of the railway line is used for the path then it is hoped to open up the route between Breamore and Burgate Cross, as a permissive public footpath, in the Spring of 2011. When the officers are satisfied that the path is in good condition and can be kept that way, then consideration will be given to dedicating the route as a public right of way. This will initially be as a footpath, but it is hoped in the long-term to accommodate cyclists and horse riders. However, that will depend on establishing further links with other safe riding routes. A further report will be taken to the Regulatory

Committee if, and when, it is decided to progress a dedication of a public right of way, either as footpath or bridleway.

8. Conclusions

- 8.1. The railway line offers a much better quality route for public access. With a width varying between 11.0 and 17.0 metres, between points A and B, it is substantially wider than the proposed alternative path. The existing line is more direct with no sharp bends for users to negotiate.
- 8.2. The railway line is set back from the main road with ponds between the two features. The alternative path is close to the main road with only a wooden close boarded fence and grass verge, between 3.0 and 8.0 metres wide, separating users from vehicles.
- 8.3. The alternative route has long-term financial implications for its maintenance, unlike the railway line which is of more substantial construction. The alternative path will require considerable financial investment to maintain its viability as a public path.
- 8.4. Ownership of the railway line, together with public highway rights over adjoining land, enables the County Council to establish an access point on the east side of Salisbury Road at any point along a wide frontage.
- 8.5. The alternative path would not have the same history or character as the existing railway line. The alternative route would be out of keeping with the remaining 1.8 miles of path to the north of point B.
- 8.6. The alternative route would probably require planning permission from the County Council for the importation of material. It is unlikely that these issues could be resolved quickly and there is no guarantee that an application would be successful.
- 8.7. It is not in the public interest to agree to the proposal put forward by the two landowners.

9. Recommendation

- 9.1. That the offer from two landowners to provide an alternative public path and to exchange land with the County Council at Burgate, Fordingbridge, be declined.

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

Hampshire safer and more secure for all:	Not applicable
Maximising well-being:	Not applicable
Enhancing our quality of place:	Not applicable

Other Significant Links

Links to previous Member decisions:		
<u>Title</u> Executive Member, Policy & Resources	<u>Reference</u> Item 17	<u>Date</u> 31/10/2006
Direct links to specific legislation or Government Directives		
<u>Title</u>		<u>Date</u>

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>
File: Burgate Cross Railway	Countryside Access Team Office Mottisfont Court Tower Street Winchester SO23 8ZF

IMPACT ASSESSMENTS:

1. Equalities Impact Assessment:

1.1. Not applicable

2. Impact on Crime and Disorder:

2.1. Not applicable.

3. Climate Change:

3.1 Not applicable.