

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	24 November 2010
Title:	Application for a Public Path Extinguishment Order for an unrecorded public footpath at Anchorage Court, Lee-on-the-Solent, Gosport
Reference:	2307
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 consider an application to extinguish such unrecorded rights as may exist through the car park of Anchorage Court at Lee-on-Solent, Gosport, to improve the security of the site. An alternative route alongside the car park has been dedicated to secure public access through the site.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application. Officers recommend that it is expedient to extinguish these unrecorded rights in the interests of the landowner on the grounds that it is no longer needed for public use. The related dedication offers a route that is no less convenient or enjoyable than the current route, and members are therefore requested to authorise the making of an Order under s118 of the Highways Act 1980 for this extinguishment.

2. Legal Framework for the Decision:

Orders for the Extinguishment of Footpaths and Bridleways 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.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to extinguish such unrecorded rights as may exist through the car park of Anchorage Court, Lee-on-Solent, Gosport, shown as route A-B on the attached large scale plan. A new route has been dedicated to the side of the car park along the route C-D, as shown on the plan.
- 3.2. It is proposed that the application for extinguishment of this route be approved under Section 118 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that it is no longer needed for public use.

4. Applicant:

- 4.1. McCarthy & Stone Retirement Lifestyles Ltd and Fairhold Homes (No.18) Ltd
c/o Bond Pearce LLP
3 Temple Quay
Temple Back East
Bristol
BS1 6DZ

5. Landowners:

- 5.1. Fairhold Homes (No.18) Ltd
Euro House
131-133 Ballards Lane
London
N3 1GR

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

6.1. Current route of unrecorded public footpath

Commencing at point A on Marine Parade East and proceeding in a generally north-easterly direction through the car park of the former Belle Vue Hotel for approximately 36 metres to Marine Parade East/High Street Access Road at point B, as shown on the accompanying plan.

6.2. Proposed alternative route to be dedicated as a public footpath

A path, 2.1 metres wide, commencing at point C on Marine Parade East and proceeding in a generally north-easterly direction between fences for approximately 36 metres to Marine Parade East/High Street Access Road at point D, as shown on the accompanying plan.

7. Background to the Application:

- 7.1. In 2003 an application was made for a Definitive Map Modification Order to record a footpath, shown as A-B on the attached plan, crossing the car park of the former Belle View Hotel, which by that time was being redeveloped as retirement flats and as such the path had been blocked off. The route of the footpath had not been marked out on the site of the hotel, but officers were of the opinion that sufficient evidence existed to suggest that, on the balance of probabilities, a highway of footpath status could be reasonably alleged to subsist. The retirement flats are now known as Anchorage Court and are now occupied.
- 7.2. As a result of this application the landowner has applied to extinguish the unrecorded public footpath, and to replace it with an alternative path approximately 5 metres to the north-west of the claimed route, along the edge of the property. Following consideration and approval by this Committee on 21st May 2008 a deed of dedication was signed to secure this route, which is now physically in place and available for public use.

8. Costs:

- 8.1. The cost of advertising the Extinguishment Order, the administrative costs up to the point at which a contested Order 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.
- 8.2. Should it be decided that an Order be made for this extinguishment, 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.
- 8.3. 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 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.

9. Consultations with Other Bodies:

- 9.1. Local Member – Cllr M Snaith-Tempia
Councillor Snaith-Tempia has been consulted on this proposal but has made no comment.
- 9.2. Gosport Borough Council
Gosport Borough Council has been consulted on this proposal but has made no comment.
- 9.3. Countryside Access Manager
The Countryside Access Manager for the area has been consulted on this proposal but has made no comment.

- 9.4. HCC – Highways Management
Highways Management has been consulted on this proposal but has made no comment.
- 9.5. HCC – Environment Department
Environment Department has been consulted on this proposal but has made no comment.
- 9.6. The Ramblers
The Ramblers has been consulted on this proposal and has no objection to it.
- 9.7. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it.
- 9.8. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal but has made no comment.
- 9.9. National Farmers Union
The National Farmers Union has been consulted on this proposal but has made no comment.
- 9.10. Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal but has made no comment.
- 9.11. Local Residents
Local residents in Anchorage Court and other nearby properties were consulted on this proposal. Only two responses were received and none had any objection to the proposal.

10. Comments on Consultation Replies

- 10.1. Of the responses received from this consultation exercise none have any objection to it.

11. Criteria for Assessment of the Proposal

- 11.1. The County Council, as the Highway Authority, has the power to make a Public Path Extinguishment Order, if it is considered expedient to do so in a particular case.
- 11.2. In considering this proposal, Members must be satisfied that path A-B is not needed for public use and that it is expedient to extinguish the public rights that may exist, 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 that the extinguishment of the right of way would have as respects land served by the path or way.
- 11.3. 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 Disability Discrimination Act 2005. Officers confirm that the requirements of those with limited mobility have been taken into account when developing the proposal for the alternative route. The alternative route that has been dedicated

replicates the access offered by the unrecorded route across the car park and will be no less accessible to those with limited mobility.

12. Conclusions:

12.1. Officers are of the opinion that the proposed extinguishment satisfies the criteria required by section 118 of the Highways Act 1980 and that it is expedient for the County Council to make this order in that:

12.1.1 The unrecorded public path is no longer needed for public use in light of the alternative route that has been dedicated.

13. Recommendations:

13.1. That an Order is made extinguishing unrecorded rights through the car park of Anchorage Court, Gosport between points A and B, in light of the alternative route that has been dedicated between C and D as shown on the accompanying plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:

Links to the Corporate Strategy

	Yes	No
Hampshire safer and more secure for all	<input type="checkbox"/>	<input type="checkbox"/>
Maximising well-being	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Enhancing our quality of place	<input checked="" type="checkbox"/>	<input type="checkbox"/>

OR

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

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>
None	

IMPACT ASSESSMENTS:

This decision has been assessed to see what impact it may have in the following areas. If it has been identified that there are possible implications which may have a negative impact this grid should identify the part of the report which covers the recommendation about how those potential negative impacts are managed or avoided.

Impact Level: **S**= Significant Impact **L** = Low Impact **None** = No impact

IMPACT AREA	IMPACT LEVEL	COMMENTS	WHERE COVERED IN REPORT (Where there are details of how impact could be managed)
Equality & Diversity Impact	None		
Crime Prevention (under Section 17)	None		
Environmental	None		