

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	27 October 2010
<b>Title:</b>	Application for a Public Path Diversion Order for parts of Footpath No. 11 in the Parish of Botley
<b>Reference:</b>	2188
<b>Report From:</b>	Director of Culture, Communities and Rural Affairs

**Contact name:** Vicky Bowskill

**Tel:** 01962 846891

**Email:** vicky.bowskill@hants.gov.uk

**1. Executive Summary:**

- 1.1. The purpose of this paper is to consider an application to divert part of Footpath No.11 in the Parish of Botley. The application has been made in the interests of the landowner for reasons of privacy and security to enable the land to be managed more effectively for domestic purposes.
- 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 divert this path in the interests of the landowner. The proposed alignment will be no less convenient or enjoyable than the current route, and 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 and Bridleways 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 or bridleway 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. Purpose of Report:**

- 3.1. Hampshire County Council has received an application to divert part of Footpath No.11 in the Parish of Botley, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Botley Footpath No.11 be approved under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that the diversion is in the interests of the landowner and that it is expedient that the line of this path should be diverted.

**4. Applicant:**

- 4.1. Patrick Blogg  
Burgessland Farm  
Church Lane  
Botley  
Hants  
SO30 2EQ

**5. Landowners:**

- 5.1. Patrick Blogg  
Burgessland Farm  
Church Lane  
Botley  
Hants  
SO30 2EQ

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

6.1. Current Routes

The current route of the part of Botley Footpath No.11 affected by this proposal leaves an access track at point A and proceeds in a generally south-westerly direction along the edge of a grassed area to a kissing gate at point C.

The length of this section of Botley Footpath No.11 is approximately 33 metres. There is no recorded width for this section.

6.2. Proposed Routes

The proposed route for this section of Botley Footpath No.11 continues from point A along the access track for a distance of approximately 20 metres before turning in a generally south-westerly direction along the boundary of a grassed area to a kissing gate at point C. The proposed route will be enclosed between post-and-rail fencing.

The length of the proposed route is approximately 45 metres and will have a recorded width of 2.5 metres.

6.3. No structures or barriers will be specified in the Order for the diverted route. The existing kissing gate at point C will remain and be refurbished, no structure will be needed at point B.

6.4. The Senior Countryside Access Ranger has produced a Schedule of Works that will be required to bring the new route up to a standard suitable for use by the public and the landowner has agreed to implement the necessary improvements.

**7. Background to the Application:**

7.1. This application has been made to allow the landowner to make use of the triangle of land to the rear of his property for domestic purposes such as growing vegetables. This triangle of land, being separated from his garden by the current path is of limited value to him and currently lies fallow, should this diversion be successful it will enable him to use the land more effectively.

7.2. The current route has no recorded width, the diverted route would have a width of 2.5 metres which would enable this path to be more effectively protected in the future.

**8. Compliance with our Diversions Criteria:**

- 8.1. The Rights of Way Office of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion (<http://www3.hants.gov.uk/making-changes/diversions.htm>), 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.
- 8.2. The diverted routes (45 metres) is slightly longer than the current alignment (33 metres), but this difference is not considered to be significant.
- 8.3. There is no recorded width for the current path. A width of 2.5 metres will be recorded for the diverted section.

**9. Costs:**

- 9.1. The cost of advertising the Diversion 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.
- 9.2. 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.
- 9.3. 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.

**10. Consultations with Other Bodies:**

- 10.1. Local Member – Cllr Kyrle  
Councillor Kyrle has been consulted on this proposal but has made no comment.
- 10.2. Eastleigh Borough Council  
Eastleigh Borough Council has been consulted on this proposal but has made no comment.
- 10.3. Botley Parish Council  
Botley Parish Council are against the diversion of public rights of way in principle. They commented that, should the diversion be successful, the extension of approximately 20 metres along the access track should be set into the verge rather than on the track itself.

- 10.4. Countryside Access Manager  
The Countryside Access Manager for South Hampshire has been consulted on this proposal and has specified the works that will be required to bring the footpath up to a condition suitable for use by the public on foot.
- 10.5. HCC – Highways Management  
Highways Management has been consulted on this proposal but have made no comment.
- 10.6. HCC – Environment Department  
The Environment Department has been consulted on this proposal but have made no comment.
- 10.7. Hampshire County Archivist  
The County Archivist has consulted the Botley Tithe Map and has found no evidence of the existence of higher rights on this particular route.
- 10.8. The Ramblers  
The Eastleigh group of the Ramblers has confirmed that they have no objection to this proposal, but asked that HCC seek a dedication of a public footpath along the main access track to Burgessland Farm from Church Lane.
- 10.9. The Open Spaces Society  
The Open Spaces Society has asked that the width proposed in the consultation (2.2 metres) be increased to 2.5 metres as the proposed route would be between fences. They have also questioned the planning designation of the triangle of land.
- 10.10. Land Access & Recreation Association (LARA)  
LARA has been consulted on this proposal but has made no comment.
- 10.11. National Farmers Union  
The National Farmers Union has confirmed that they have no objection to this proposal.

## **11. Comments on Consultation Replies:**

- 11.1 The request from the Open Spaces Society for the width to be increased from 2.2 metres to 2.5 metres has been taken on and the width now proposed is 2.5 metres.
- 11.2 The concern of the Open Spaces Society regarding the planning designation of this land has been discussed by the applicant with Eastleigh Borough Council. The applicant offered to discuss this further with the Open Spaces Society but this opportunity was not taken up.
- 11.3 The request by the Eastleigh Group of the Ramblers for a public footpath to be dedicated along the main driveway to Church Lane has been discussed with the applicant. However this driveway is not in the ownership of the applicant and so it is not in his gift to make such a dedication. This request has been logged with other network improvement requests, so that it can be addressed should the opportunity arise in the future.

- 11.4 The comment of the Parish Council that the section of proposed route along a further 20 metres of the access track between points A and B should be set into the verge has been discussed with the applicant. Given that this 20 metres is along the same track followed on the approach to point A, and the impact that this would have on the use of what is quite a small triangle of land, he does not feel that this option is either necessary or desirable. Officers consider that traffic on this access track is infrequent and poses little risk or inconvenience to walkers.
- 11.5 Botley Parish Council have stated that they object in principle to rights of way being diverted. Officers understand this position, however section 119 of the Highways Act 1980 does allow for diversions to be made in the interests of a landowner, providing that the proposed route is not substantially less convenient to the public using the route, and this application should be assessed accordingly.

## **12. Criteria for Assessment of the Proposal:**

- 12.1 The Council, as Highway Authority, has the power to make a Public Path Diversion Order, if it is considered expedient to do so in a particular case, and if (as in this case) it is in the interests of the landowner.
- 12.2 Section 119(2) of the Highways Act 1980 requires that a Diversion Order should not be made unless the new termination point is substantially as convenient to the public as the existing termination point. In this case, both points of termination (A and C) remain unchanged.
- 12.3 Section 119(6) of the Highways Act 1980 sets out the 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:
- the diversion would have on public enjoyment of the path or way as a whole;
  - the coming into operation of the order would have as respects other land served by the existing public right of way; and
  - 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 in response to the Order, Officers feel that the proposal meets these tests.

- 12.4 Section 29 of the Highways Act 1980 requires the County to have due regard to the needs of agriculture (including the keeping and breeding of horses), forestry and nature conservation when considering the making of public path order. Officers confirm that there are no adverse effects on these activities associated with the making of this Order.

- 12.5 Section 69 of the Countryside and Rights of Way Act 2000 requires the County 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 new route. The route will have no additional structures on it, the surface will be comparable with the existing route and the width of 2.5 metres will allow for easy use by walkers of varying levels of ability.

**13. Conclusions:**

- 13.1. Officers are of the opinion that the proposed diversion satisfies the minimum criteria set out in section 119 of the Highways Act 1980 and that it can be considered expedient for the Council to make an order in that:
- 13.1.1. The proposed diversion will be in the interests of the landowner in allowing him to manage his land more effectively.
  - 13.1.2. The proposed diversion will not be substantially less convenient than the existing route, in that the proposed route A-B-C (45 metres) is only slightly longer than the current route A-C (33 metres). The proposed route will be comparable in surfacing, the existing structure will be improved and the route will have a recorded width of 2.5 metres where the current route has no recorded width.
  - 13.1.3. It is unlikely that there will be any material increase in the cost of maintaining the route at public expense.

**14. Recommendations:**

- 14.1 It is recommended that an Order should be made for the permanent diversion of this part of Botley Footpath No.11 from A-C to A-B-C as shown on the attached 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>
General Correspondence	I:\Recreation and Heritage\Countryside Service\Rights of Way\Vicky Bowskill\Orders by Parish\Botley FP11 – Div
Proposal File	VB\Div\Botley FP11

**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		