

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	29 September 2010
Title:	Application for a Public Path Diversion Order for part of Footpath No.1 in the Parish of Dogmersfield
Reference:	2069
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 divert part of Dogmersfield Footpath No.1. The application has been made in the interests of the landowner to enable him to manage the land more effectively for agricultural purposes. The proposal also offers benefits to the public, including a viewing platform to be constructed adjacent to the diverted route and a quiet route segregated from increasing farm traffic.
- 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 or bridleway 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 Dogmersfield Footpath No.1, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Dogmersfield Footpath No.1 be approved under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that it 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. Dogmersfield Park Estate
Dogmersfield
Hampshire
RG27 8TU

5. Landowners:

- 5.1. Dogmersfield Park Estate
Dogmersfield
Hampshire
RG27 8TU

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

6.1. Current Routes

The section of Dogmersfield Footpath No.1 affected by this proposal commences at Point A (GR 476268 151623) and proceeds in a generally north-easterly direction along a metalled farm track to Point B (GR 476856 152199).

The length of Dogmersfield Footpath No.1 between Points A and B is approximately 890 metres. There is no recorded width for this section.

6.2. Proposed Routes

The proposed route of this section of Dogmersfield Footpath No.1 commences at Point A (GR 476268 151623) and proceeds in a generally easterly and then north-easterly direction over the top of a hill, passing around the western side of a viewing platform at Point C (GR 476466 151782), before proceeding down the other side of the hill to rejoin the existing definitive line at Point B (GR 476856 152199).

The length of this route is approximately 860 metres and will have a firm and level grass surface and a width of 2.5 metres throughout.

- 6.3. 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. In December 2008 planning permission was granted by Hart District Council for the erection of a viewing platform on the Dogmersfield Park Estate close to the existing route of Dogmersfield Footpath No.1, reference 08/02405/FUL. The diversion of Dogmersfield Footpath No.1 to serve the viewing platform is a condition of this planning permission. See attached drawings.
- 7.2. In January 2009 an application was made to Hampshire County Council for the diversion of Dogmersfield Footpath No.1. The reasons given are to remove the footpath from the estate road, improving safety for path users, and to provide access to the new viewing platform as required by the planning permission detailed above.
- 7.3. Planning permission was granted by Hart District Council in December 2009 for the erection of agricultural buildings under application 09/00581/FUL and building works are due to commence during autumn 2010. These buildings will be accessed directly from the estate road along which footpath no. 1 currently runs and will add significantly to the number of associated vehicular and livestock movements on the farm track and footpath no. 1, bringing users into potential conflict with farm traffic.

- 7.4. The viewing platform is to be sited at the highest point within the historic Dogmersfield Park, close to the site of the original belvedere and providing a vantage point from which views can be enjoyed over the surrounding historic parkland, lake and listed mansion. This facility will encourage path users, visitors to the mansion and those using the Basingstoke Canal to explore the park. In accordance with planning permission this facility cannot be provided unless the footpath is diverted as proposed.

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 route offers a safe and quiet route, segregated from farm traffic with excellent views across the historic landscape. It is not anticipated there will be any gates or other structures on this route and a firm, level grass surface should make it suitable for many less-able path users.
- 8.3. There is no recorded width for this section of path so by recording a width of 2.5 metres throughout it can be more effectively protected in the future.

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 J Glen
Councillor Glen has been consulted on this proposal but has made no comment.

- 10.2. Hart District Council
Hart District Council has been consulted on this proposal but has made no comment.
- 10.3. Dogmersfield Parish Council
Dogmersfield Parish Council has been consulted on this proposal and has no objection to it. They have commented that they would like to see the viewing platform constructed prior to the diversion coming into effect to ensure the safety and continuity of public access whilst this work is carried out. They have also asked that the surfacing be improved at Point A on the attached plan to avoid the muddy conditions that exist here for much of the year.
- 10.4. Countryside Access Manager
The Countryside Access Manager for the area 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.
- 10.5. HCC – Highways Management
Highways Management has been consulted on this proposal but has made no comment.
- 10.6. HCC – Environment Department
The Environment Department has been consulted on this proposal and has no objection to it. Attention was drawn to the presence of the nearby historic icehouse which is understood to survive as a subterranean chamber that could have safety implications for the new route.
- 10.7. Hampshire County Archivist
The County Archivist has consulted the Dogmersfield Tithe Map and the route of this footpath is recorded on the map.
- 10.8. The Ramblers
The Ramblers has been consulted on this proposal and have no objection to it, commenting that the proposed route seems to be a great improvement over the existing route.
- 10.9. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it. A concern was raised on the alignment at the southern end where the proposed route curved round to meet the existing route at a right angle at Point A on the attached plan.
- 10.10. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal but has made no comment.
- 10.11. The British Horse Society
The British Horse Society has been consulted on this proposal but has made no comment.
- 10.12. The Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal but has made no comment.
- 10.13. National Farmers Union
The National Farmers Union has been consulted on this proposal and supports it as a worthwhile change.

11. Comments on Consultation Replies:

- 11.1. Of the responses received from this consultation exercise, all are either in support, or have no objection to it.
- 11.2. In accordance with Dogmersfield Parish Council's concerns, Officers can confirm that works on the viewing platform and the proposed route will be required to be complete before the Order, if made, comes into effect. The mud patch at Point A on the attached plan will also be surfaced to improve the conditions here in wet weather.
- 11.3. The presence of the icehouse raised by the Environment Department is marked on the map but is not on the proposed route and will be fenced away from it.
- 11.4. In response to the concern raised by the Open Spaces Society regarding the alignment of the proposed route at the southern end, this comment has been taken into account and the alignment of the route has been amended to exit at the field corner, creating a more natural line for the path than was originally proposed, whilst not impacting unduly on the use of the field for agricultural purposes.

12. Criteria for Assessment of the Proposal:

- 12.1. The County Council, as the 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 termination points remain the same.
- 12.3. 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:
 - 12.3.1. the diversion would have on public enjoyment of the path or way as a whole;
 - 12.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - 12.3.3. 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.

- 12.4. 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 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 proposed route will have no structures and a firm, level grass surface with a width of 2.5 metres throughout. In this way the proposed route should be accessible to those with limited mobility.

13. Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make the orders in that:

- 13.1. The proposed change would enable the landowner to manage the land more effectively for agricultural purposes, and would improve safety for path users.
- 13.2. The proposed diversion will not be substantially less convenient than the existing route, and it can be argued that the proposed route offers an improved experience in terms of views and general experience.
- 13.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

14. Recommendations:

- 14.1. That an Order is made diverting Dogmersfield Footpath No.1 from the current definitive alignment to an alignment following the route A-C-B, 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>
General Correspondence	I:\Recreation and Heritage\Countryside Service\Rights of Way\Vicky Bowskill\Orders by Parish\Dogmersfield FP1 - Div
Proposal File	VB\Div\Dogmersfield FP1

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		