

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	26 May 2010
Title:	Application for a Public Path Diversion Order for part of Bridleway No.13 in the Parish of Headley
Reference:	1609
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 Headley Bridleway No.13 in the interests of the landowner for reasons of privacy and security due to the redevelopment of an adjacent property. The proposal also offers benefits to the public, including an increased width, improved views and segregation from increased vehicular traffic on the private driveway leading to the property under development.
- 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 Headley Bridleway No.13, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Headley Bridleway No.13 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. Richard & Wendy Dean
Birch Paddock
Frensham Lane
Headley
GI10 2QC

5. Landowners:

- 5.1. Richard & Wendy Dean
Birch Paddock
Frensham Lane
Headley
GI10 2QC

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

6.1. Current Routes

The section of Headley Bridleway No.13 affected by this proposal commences at Point A (GR 483870 139118), on the southern boundary of the property, and then heads in a north-easterly direction along a gravel track to Point B (GR 483922 139210). It then follows a private driveway in a north-westerly direction to arrive at a junction with the C102 Frensham Lane at Point C (GR 483852 139302).

The length of Headley Bridleway No.13 between Points A, B and C is approximately 224 metres and a width of 9ft (2.7 metres) is recorded.

6.2. Proposed Routes

The proposed route of this section of Headley Bridleway No.13 will commence at Point A (GR 483870 139118) and proceed in a generally north-westerly direction across level ground between post-and-rail fences. The route will go around an electricity pole support at Point H, turning through Points G and F to run in a generally north-easterly direction, adjacent to the vehicular highway, to join with the C102 Frensham Lane at Point D (GR 483852 139302).

The length of the proposed new bridleway between Points A, H, G, F, E and D will be approximately 325 metres and the new section of bridleway will have a minimum width of 4 metres throughout, between post and rail fencing with a level grass surface. There will be two large wooden bollards at Point E, set well back from the road to allow room for horses to pass before joining the vehicular highway. There will be no other structures along the new route.

7. Background to the Application

- 7.1. The existing bungalow to the north of Point B on the attached plan is being redeveloped under East Hants District Planning Approval No.36766/006/FUL. Although this redevelopment will not directly affect the current route Headley Bridleway No.13, it has lead the new owner to apply to divert the alignment of the bridleway away from this property for reasons of privacy and security.
- 7.2. A route was proposed running diagonally across pasture from Point A to Point C on the attached plan, however this was objected to by local horse riding representatives. One of the reasons for their objection was the reduced length offered by this alignment which they felt detracted from their enjoyment of the area. Following close consultation between the applicant and local riders the current proposal was developed, offering an improved experience for path users and an additional 100 metres of public bridleway to the network.
- 7.3. The proposal provides for an attractive route with good all-round views and a generous width of 4 metres. Double post and rail fencing will be provided to prevent horses in the paddocks from interfering with path users. The proposed route will mean that pedestrians, equestrians and cyclists are separated from vehicles accessing the properties along the section C to B and remove any sense of invasion of privacy for path users as the garden and dwelling is developed.

- 7.4. The proposal would allow the applicant to install vehicle gates on the driveway to the new property to improve the security of the premises, without restricting the right of way. The proposed route has already been constructed and made available as a permissive alternative during building works at the site and appears to be well used in preference to the definitive line.
- 7.5. The cost of advertising the Diversion Order, together with the administrative costs up to the order-making stage, will be met by the applicant. The County Council has no power to charge for administrative costs after the Order has been made.

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 an additional 100 metres of attractive bridleway to the network, eliminating the potential for conflict with vehicles accessing the properties and offering more distant views than the current route.
- 8.3. The only structure required on the proposed route is a set of large bollards at point E to prevent vehicular access to the route. These will allow for open access to legitimate path users, accommodating a range of levels of ability.
- 8.4. The width for the current route of Headley Bridleway No.13 is recorded in the Definitive Statement as 9 feet (2.7 metres). It is proposed to record an increased width of 4 metres for the diverted section so this can be effectively protected in the future.

9. Consultations with Other Bodies:

- 9.1. Local Member – Cllr S James
Councillor James has been consulted on this proposal and has no objection to it.
- 9.2. East Hampshire District Council
East Hampshire District Council has been consulted on this proposal.
- 9.3. Headley Parish Council
Headley Parish Council has been consulted on this proposal and has commented that “they see no reason for diverting this long established route, and indeed consider that a diversion of this nature, for the reasons given, could set a precedent for other diversion requests.”
- 9.4. 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 bridleway up to a condition suitable for use by the public.

- 9.5. HCC – Highways Management
Highways Management has been consulted on this proposal and have no objection to it.
- 9.6. HCC – Environment Department
Environment Department has been consulted on this proposal and have no objection to it.
- 9.7. Hampshire County Archivist
The County Archivist has consulted the Headley Tithe Map and found no evidence of higher rights on the affected route.
- 9.8. The Ramblers' Association
The Ramblers' Association has been consulted on this proposal and has no objection to it.
- 9.9. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal.
- 9.10. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal.
- 9.11. National Farmers Union
The National Farmers Union has been consulted on this proposal and have no objection to it.
- 9.12. Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal.
- 9.13. The British Horse Society
The British Horse Society has been consulted and are in support of the current proposal.

10. Comments on Consultation Replies

- 10.1. Of the responses received from this consultation exercise, the majority are either in support, or have no objection to it.
- 10.2. Headley Parish Council have commented that they do not see any reason for this diversion and have expressed concerns regarding the possibility of setting a precedent for similar diversions in the future. HCC understands the concerns of the Parish Council, however, section 119 of the Highways Act 1980 does make provision for diversions to be made in the interests of the landowner, providing that the proposal can meet the required legal tests. Officers feel that this application does meet the required legal tests and as such do not feel that the concerns of the Parish Council provide sufficient grounds to refuse this application.

11. Criteria for Assessment of the Proposal

- 11.1. 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.
- 11.2. 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 the point A remains unchanged and point D is approximately 10 metres south-west of the existing termination at point C.

- 11.3. 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:
 - 11.3.1. the diversion would have on public enjoyment of the path or way as a whole;
 - 11.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - 11.3.3. 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.

- 11.4. 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 is free from structures, other than the bollards at point E which are spaced to allow sufficient room for mobility vehicles, cycles and horses. In this way and by removing the potential for conflict between path users and vehicles on the section B-C the proposed route should be more accessible to those with limited mobility.

12. 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:

- 12.1. The proposed change will provide for improved privacy and security of the re-developed dwelling to the north of point B.
- 12.2. 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 segregation from vehicular traffic.
- 12.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

13. Recommendations:

- 13.1. That an Order is made diverting Headley Bridleway No.13 from the current definitive alignment to an alignment following the route A-H-G-F-E-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.)

Document Location

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		