

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	26 May 2010
<b>Title:</b>	Proposed dedication of a public bridleway over Little Bagmore Lane, Herriard
<b>Reference:</b>	1626
<b>Report From:</b>	Director of Culture, Community and Rural Affairs

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### 1. Executive Summary

1.1. The purpose of this paper is to decide whether or not Hampshire County Council should accept an offer from Mr JTL Jervoise to dedicate a public bridleway, as shown on the attached plan. The Regulatory Committee has the authority to accept or decline this offer.

### 2. Legal framework for the decision

2.1.

HIGHWAYS ACT 1980 Section 25: Creation of a footpath or bridleway by agreement

- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted bridleway over land in their area. An agreement under this section is referred to in this Act as a "public path creation agreement".
- (2) For the purposes of this section "local authority" –
  - (a) in relation to land outside Greater London means a county council, a district council...
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed,

provide for the dedication of the footpath or bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.

- (5) Where a public path creation agreement has been made it shall be the duty of the local authority, who are a party to it, to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation agreement, the local authority who are party to that agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area which the land to which the agreement related is situated.

### **3. Landowner**

Mr JTL Jervoise

### **4. Background**

- 4.1 This route is not currently recorded on the definitive map. In 1993 an application was made under section 53(5) of the Wildlife and Countryside Act 1981, to record this route as a Byway Open to All Traffic (BOAT) on the definitive map.
- 4.2 In October 2005 the Regulatory Committee decided to refuse the application, but found that this route did carry the status of footpath.
- 4.3 The applicant appealed against the decision not to record the route as a BOAT, but this application was deemed not to be valid by the Secretary of State.
- 4.4 Normally, an Order to record the route as footpath would have been made following these decisions. Members of the public would have an opportunity to object to this Order, and if necessary, the status of the route would be determined by a Planning Inspector, possibly following a public inquiry.
- 4.5 In this case, the landowner has offered to dedicate the route as a bridleway. Given that the County Council has decided that the route carries the status of footpath only, officers consider that the completion of such an agreement would resolve the outstanding Wildlife and Countryside Act application and provide additional public benefit (namely a right of way for horse riders and cyclists) not considered achievable in this case under the Wildlife and Countryside Act procedure.

4.6 Officers have considered whether any member of the public will be prejudiced if the dedication is accepted and the footpath Order not made. Having assessed the competing interests of members of the public whose right to object to a footpath Order would be removed, against the practical advantages of accepting the dedication of the bridleway, officers are of the opinion that on balance, the dedication of the bridleway would be in the public benefit.

## **5. Description of bridleway and terms of dedication:**

5.1 The path is shown on the plan as A-B. It runs from the C12, Bagmore Lane, to Bridleway 9, Herriard.

5.2 The land to be dedicated as bridleway is shown in grey on the attached plan. The route has a minimum width of 4 metres and a maximum width of 16 metres. It is approximately 990 metres in length.

5.3 The proposed dedication will be subject to the following limitations:

5.3.1 *The landowner may, at any time erect a lockable gate at Ordnance Survey Grid Reference SU 6639 4396 provided that a clear gap of at least 1.2 metres will be left alongside this gate. This structure and gap to be maintained at the landowner's expense.*

5.3.2 The landowner wishes to have the option of erecting a gate across the route in case of unlawful use of the bridleway by motorised vehicles. He has agreed to leave a gap of 1.2 metres alongside this gate to allow for equestrian and pedestrian access.

5.3.3 Officers have sought advice as to whether the County Council can accept the dedication of a bridleway with a limitation over an unrecorded right of way (albeit of a lower status) which it believes exists without any limitations. Officers of the County Council's Legal Practice department advise that as a bridleway is a different specie of highway than a footpath, a bridleway can be dedicated under section 25 Highways Act 1980 with a limitation as part of the dedication agreement.

5.3.4 The proposed gap of 1.2 metres falls short of the British Standard 5709 for gaps which stipulates that gaps on bridleways should be of a minimum width of 1.5 metres. Officers have raised this issue with Mr Jervoise, but he is concerned that a gap wider than 1.2 metres may not prevent quad bikes from accessing the route. Officers have consulted representatives of local riders, including the British Horse Society, who are in agreement that the advantages that this bridleway would bring outweigh the disadvantages of a gap narrower than would normally be

expected. The British Standard is itself a guideline, not a mandatory requirement, and it is therefore up to Hampshire County Council to decide whether or not to accept the dedication of a bridleway with a structure that does not meet this guideline. Officers advise that, in this particular case, the proposed 1.2 metre wide gap is acceptable.

5.3.5 *Following the completion of this dedication, this bridleway will become a highway maintainable at public expense, and as such will be recorded on the County Council's List of Streets (as required to be kept under section 36(6) of the Highways Act 1980). Hampshire County Council will maintain the surface of the route to a standard commensurate with its expected level of public use.*

5.3.6 Though it is not normal County Council practice to add publicly maintainable rights of way to the List of Streets, the list should, in fact, include all highways maintainable at public expense. Officers in Hampshire Highways have therefore agreed that, in this specific case they will record the route on the List of Streets.

5.3.7 *In the event of unlawful use of the bridleway by mechanically propelled vehicles, the County Council will take all reasonable action to prohibit such use.*

## **6. Consultation with other bodies**

### **6.1 Herriard Parish Council**

No Comment

### **6.2 Basingstoke District Council**

No comment.

### **6.3 Local Member – Councillor Anna McNair Scott**

Councillor McNair-Scott states: "I am very pleased that the situation has resolved itself in such a satisfactory way for all concerned."

### **6.4 Ramblers' Association**

Comments that this would be a useful addition to the network.

### **6.5 Open Spaces Society**

No comment.

### **6.6 British Horse Society**

Welcomes the application and comments that although the width of the gap falls short of the current British Standard, a gap with a width of 1.2m would nevertheless be acceptable.

### **6.7 Cyclists' Touring Club**

No comment.

6.8 Byways and Bridleways Trust

Has raised a number of concerns regarding the acceptability of a gap which does not accord with the British Standard 5709 or the width laid down in section 145 of the Highway's Act 1980. This point is considered in paragraph 4.3 of this report.

6.9 Hants and West Sussex Borders Bridleways Group

Welcomes the proposal and comments that though the gap width falls short of the British Standard, it would be acceptable in this case.

6.10 British Driving Society

No comment.

6.11 Trail Rider's Fellowship

No comment.

6.12 LARA

No comment.

6.13 Hampshire Highways

No Comment

6.14 Countryside Access Manager

Is aware of the proposal

**7. Countryside Access Plans:**

7.1 The parish of Herriard falls within the Hampshire Downs Countryside Access Plan area. The plan for this area was published in November 2007.

7.1.1 It is considered that the dedication of a bridleway in this area would address two issues identified in this plan, namely:

***Issue 2 – Countryside users are forced to use or cross busy roads to link up rights of way and other off-road access.***

The dedication of a bridleway in this area would provide an important off-road link in the local network; currently walkers and equestrians wishing to travel from the Lasham/Shalden area towards Herriard/Ellisfield would need to travel along the A339, this bridleway would offer an alternative route.

***Issue 5 – Local people would like to see improved connections within the countryside access network, to enable all users to plan a range of circular off-road routes.***

This bridleway would link with Herriard Bridleway 9 at its southern end, and Herriard BOAT 5 and Footpath 2 at its northern end, thus offering a potential circular walk / ride of approximately four and a half miles, of

which only approximately 350 metres would include walking or riding on a tarmac'ed 'C' road.

- 7.2 In addition, part of the proposed new bridleway has been specifically identified by local riders as a missing link in the local network which would provide a link between Herriard and Bradley/Burkham, avoiding a fast, dangerous road.

## **8. Financial implications**

- 8.1 Should this Committee accept the dedication of the new route, the maintenance of the surface of the route would become the responsibility of the County Council. There is no intention to make any change to the surface of the route; it requires only suitable waymarking. Because of the nature of the surface and of the traffic that the path already receives, it is not thought that any additional maintenance will be required. The maintenance responsibility for the structure on the route will remain with the landowner.
- 8.2 Under s.25(6) the highway authority must give notice of the dedication by the publication of an advertisement in a local newspaper, so there will some expense associated with this.
- 8.3 It is normal in such cases for the County Council to meet the reasonable legal costs of the party proposing the dedication. In this case Hampshire County Council has agreed to contribute up to £2000 towards the landowner's legal costs.

## **9. Conclusions**

- 9.1 The County Council believes that this route carries public footpath rights, though these rights have not yet been confirmed. This dedication would secure higher rights over the route, thus offering increased public benefit. The dedication would also enable the extant Wildlife and Countryside Act application to be concluded.

## **10. Recommendation**

**That the dedication of a bridleway be accepted, with thanks.**

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

<b>Hampshire safer and more secure for all:</b>	no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes
Corporate Improvement plan link number (if appropriate):	

**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 505/505 Little Bagmore Lane, Herriard	Access Team Office, Mottisfont Court, Winchester