

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date:</b>	24 November 2010
<b>Title:</b>	Proposal to make a definitive map modification Order to amend the route of part of Lymington Footpath No.75
<b>Reference:</b>	2329
<b>Report From:</b>	Director of Culture, Communities and Rural Affairs

**Contact name:** Colin Piper

**Tel:** 01962-846043

**Email:** Colin.piper@hants.gov.uk

**1. Executive Summary:**

- 1.1. An error has been discovered in the route of Lymington Footpath 75 in the locality of a property called Sandpipers in Normandy Lane. The map incorrectly shows the path running through the garden of Sandpipers and connecting with Normandy Lane, whereas it should pass around the head of an old dock.
- 1.2. This report seeks Members authority to make an Order to alter the definitive map so that the correct route is depicted. Although the error is very small it is significant enough to be apparent on the definitive map and convey the information to the public that there is a link to Normandy Lane, through the garden of Sandpipers.

**2. Legal framework for the decision:**

**2.1. WILDLIFE AND COUNTRYSIDE ACT 1981:**

(s.53) Duty to keep definitive map and statement under continuous review:

(2) As regards every definitive map and statement, the surveying authority shall:

b) ... keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.

(3) The events referred to in sub-section (2) are as follows: -

c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

**3. Landowners:**

- 3.1. Mr & Mrs Holmes  
Sandpipers  
Normandy Lane  
Lymington  
Hampshire  
SO41 8AE

**4. Background:**

- 4.1. In January 2008 an enquiry was received from a member of the public regarding the perceived obstruction of Footpath 75 at Sandpipers preventing access to the sea wall path between Lymington and Keyhaven. Research at the time was inconclusive as to the precise route of the footpath and the problem was logged as an anomaly to be investigated at a later date. This was not seen as a priority at the time because the whole length of path between Normandy Lane and the sea wall had been overgrown and impassable for many years. In October 2009 the owners of Sandpipers contacted the Rights of Way team seeking clarification of the route of the footpath.

**5. Description of footpath:** (see attached plan)

- 5.1. Footpath 75 is a very long right of way that, for the most part, runs along the sea wall between Lymington and Keyhaven. Just south of Lymington Town it deviates away from the route of the old sea wall and loops around an old creek or dock (A-B-E-F). However, in practice, the public have used the short link across the mouth of the dock (A-F) as part of their walks along the sea wall. The loop around the dock has not been used for many years and in consequence it has become overgrown with scrub. All of the land surrounding Sandpipers is owned by Hampshire County Council and is part of Lymington & Keyhaven Nature Reserve.
- 5.2. On the west side of Normandy Lane there is a stream running parallel to the road which, in years gone by, drained into the sea via a culvert underneath Normandy Lane and the garden of Sandpipers (shown by dashed blue line). This arrangement was altered in the 1980s to stop flooding in the area. A new water course was constructed north of Sandpipers to by-pass the property and this stream cut through the old bank on the north side of the dock and, of course, the route of Footpath 75. This means that the route of the footpath is impossible to re-open without constructing a large new bridge.

## 6. Historic evidence

### 6.1. 1870 Ordnance Survey County Series Map (25 inches to 1 mile)

This map shows a creek, or dock, extending from the sea towards the road known as Normandy Lane, but stopping just short of the road. In between the end of the dock and the road there is a thin strip of land that the book of reference describes as an 'arable field'. On both sides of the dock there are drawn slope symbols to indicate embankments and on top of the slope there are pecked lines that indicate a footpath. This path does not connect with Normandy Lane but stops at the field

### 6.2. 1895 Ordnance Survey County Series Map (25 inches to 1 mile)

This map shows a very similar situation to the 1870 map. The dock has narrowed and become overgrown with reeds, but the earth embankments still exist on both sides. There is now a building in the arable field where Sandpipers is now situated. There is nothing on this map to show a path between the dock and Normandy Lane.

### 6.3. 1908 Ordnance Survey County Series map (25 inches to 1 mile)

There is no material difference between this map and its predecessor. The building has altered and is now positioned where the garage of Sandpipers is now situated. There is a small gap between the building and the dock over which it is feasible that a footpath could run.

### 6.4. 1940 Ordnance Survey County Series Map (25 inches to 1 mile)

This map is virtually identical to the map of 1908.

### 6.5. 1951 Draft definitive statement for Lymington

The first description of the paths to be shown on the definitive map were usually drawn up by the parish councils. It is not known who wrote the statements for Lymington, but the description for the relevant part of Footpath 75 is as follows: *"...the path continues along the sea wall to a fenced loop around a bunny (no access to Normandy Lane) over stiles by weir or bunny trap, thence southwards along sea wall..."*

### 6.6. 1955 First definitive map (1/10,560 scale)

The first map shows Footpath 75 by purple line looping around the dock and not across the mouth of the dock. This suggests that there was an obstruction of some sorts on the short link on the sea wall making it necessary to deviate inland around three sides of the dock.

### 6.7. 1960 Map from Borough Engineer (1/2,500 scale)

This map relates to a problem with a footpath to the south of Sandpipers, but the map has been highlighted to show all the footpaths in the locality. The route of Footpath 75 is shown by a solid green line running on the top of the embankments and around the head of the dock.

6.8. 1964 Third definitive map (1/25,000 scale)

The scale of this map makes it impossible to be certain exactly where Footpath 75 runs. It is generally shown by a purple line around the sides and head of the dock in the same manner as its predecessors.

6.9. 1977 Ramblers Survey

As part of a comprehensive survey of all rights of way in Hampshire the Ramblers walked and described Footpath 75. The relevant description says: *"In reaching this point (point A on map) the path crosses the outlet to a stream and does not follow its north bank to Normandy Lane, returning by its south bank, as shown on map."*

6.10. 1982 Ordnance Survey National Grid map (1/2,500 scale)

This map shows the dock as an area of marsh with embankments on both sides. The house known as Sandpipers is depicted in its current location together with the garage on the north side. There is no indication on this map of a footpath in this locality.

6.11. 1988 Dedication of footpath

The short section of path across the mouth of the dock was formally dedicated by the landowner, Lymington Yacht Haven, as a public footpath, in 1988. In discussions leading up to this dedication the landowner observed that: *"It would seem logical to formally make this the footpath since nobody goes right up the fields and back round the dock which is totally overgrown. In fact, the public hardly ever use the path you have shown but stick to the water's edge over the newly reclaimed land forming part of the yacht harbour."*

**7. Consultation with other bodies**

7.1. Lymington & Pennington Town Council

Councillor Vernon-Jackson is in agreement with the proposed course of action.

7.2. New Forest District Council

No comment

7.3. County Councillor – A Evans

No comment

7.4. New Forest National Park Authority

The Countryside Access Officer has no objection to the proposed Order.

7.5. Countryside Access Team (South)

No objection

7.6. Ramblers Association

The New Forest Area Secretary has written to say:

*"I am familiar with Lymington Footpath 75 and accept that it has never connected with Normandy Lane. I would have no objections to the recommended alteration."*

7.7. The Lymington Society

The Chairman has replied to say that the Society has no objection to the path being extinguished providing that the evidence for the lack of connection to Normandy Lane is sound.

**8. Conclusions:**

- 8.1. From the old maps and other documents it is apparent that the definitive map is in error in showing the public footpath connecting with Normandy Lane. The right of way should pass behind the garage of Sandpipers around, what used to be, the head of the dock. The strongest evidence for this route is the comprehensive description of the path, made in 1951, by whoever drew up the draft definitive statement. Those consultees that have local knowledge of this area agree that there has never been a footpath link to Normandy Lane at this point.
- 8.2. Due to the small scale (1/25,000) of the third edition of the definitive map it is not possible to see the exact route of Footpath 75 in this locality. The current (fourth) edition of the definitive map was published at a larger scale (1/10,000) and officers believe that, in digitising the data for the new map an error was made in showing the route B-C-D-E. This alignment is not in accordance with previous documentation and, taking account of all other available evidence, it is considered that the map should be amended accordingly to show route B-E.
- 8.3. It is recognised that the proposed map modification Order does nothing to resolve the problem with the overgrown and unusable path on both sides of the dock. However, it is incumbent on the County Council to promptly rectify any mistakes discovered on the definitive map especially where, as in this case, the erroneous information could have a detrimental impact upon the landowners enjoyment of their property.
- 8.4. Officers in the Countryside Service are looking at ways in which the footpath could be at least partially reopened for public use. This might involve the establishment of an access from Normandy Lane north of Sandpipers, on County Council property, that by-passes the need for a new bridge. Any further proposals to create, divert or extinguish rights of way in this locality will be the subject of a further report to the Regulatory Committee.

**9. Recommendation:**

- 9.1. That authority be given for the making of an Order to delete the public footpath between points B-C-D-E as shown on the attached map and to add a footpath between points B-E as shown on the attached map.

**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>	No
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	No
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:</b> Members authority is required to make a definitive map modification Order.	

**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: Lymington Footpath 75	Room 200 Mottisfont Court High Street Winchester SO23 8ZF