

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.4 in the Parish of Mottisfont
Reference:	2068
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 permanently divert part of Mottisfont Footpath No.4 as part of the restoration of the former Kimbridge Quarry site, Hampshire County Council planning application number 08/02603/CMAS. The proposed route offers an improved width, surfacing and accessibility.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application. Officers believe that this diversion is necessary to allow the development to be carried out in accordance with planning permission already granted, in that it is required as part of the approved restoration plan for this site. Members are therefore requested to authorise the making of an Order under s257 of the Town & Country Planning Act 1990 for this diversion.

2. Legal Framework for the Decision:

Orders for the Diversion of footpaths, bridleways or restricted byways may be made under Section 257 of the Town & Country Planning Act 1990, in the following circumstances:-

- (1) ...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
 - (a) in accordance with planning permission granted under Part III, or
 - (b) by a government department.

- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—
 - (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
 - (b) for authorising or requiring works to be carried out in relation to any footpath, bridleway or restricted byway for whose stopping up or diversion, creation or improvement provision is made by the order;
 - [(c) not included.]
 - (d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.
- (3) An order may be made under this section authorising the stopping up or diversion of a footpath, bridleway or restricted byway which is temporarily stopped up or diverted under any other enactment.
- (4) In this section 'competent authority' means –
 - (a) in the case of development authorised by a planning permission, the local planning authority who granted the permission or, in the case of permission granted by the Secretary of State, who would have had power to grant it.
 - (b) in the case of development carried out by a government department, the local planning authority who would have had power to grant planning permission on an application in respect of the development in question if such an application had fallen to be made.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to permanently divert part of Mottisfont Footpath No.4, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Mottisfont Footpath No.4 be approved under Section 257 of the Town and Country Planning Act 1990, on the grounds that the diversion is required as part of the approved restoration plan for the site and that it is expedient that the line of this path should be diverted.

4. Applicant:

- 4.1. CEMEX UK Operations
CEMEX House
Coldharbour Lane
Thorpe
Egham
Surrey
TN20 8TD

5. Landowners:

- 5.1. The Trustees of the Brendish Trusts (aka 'The Kimbridge Estate')
c/o Knight Frank
Ramsbury House
22 High Street
Hungerford
Berkshire
RG17 0NF

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

6.1. Current Route

The section of Mottisfont Footpath No.4 affected by this diversion commences at a stile at Point A (GR 432025 125341) and proceeds in a north-easterly direction to a stile at Point B (GR 432335 125515) where the path joins Dunbridge Lane.

The length of this section of Mottisfont Footpath No.4 is approximately 350 metres.

6.2. Proposed Route

The proposed route for the diversion of this part of Mottisfont Footpath No.4 will commence at an existing stile at Point A (GR 432025 125341) and proceed between post and wire fencing in a generally northerly then easterly direction to Point B (432335 125515) where it will join Dunbridge Lane via a medium mobility kissing gate. The route will have a compacted stone surface and a width of 4 metres.

The length of this proposed diversion is approximately 465 metres.

7. Background to the Application:

- 7.1. This diversion is required as part of the restoration of this quarry site now that mineral extraction is complete. It is not possible to reinstate the existing definitive line as this now lies across a newly created lake and as such an application has been made to divert the path onto a sweeping route to the north of the lake. During the operation of this site a temporary diversion has been in place along the route marked A-C-D-B on the attached plan and this is still the only route currently available, but it is not considered to be a suitable route for permanent diversion.

- 7.2. The proposed route will benefit from a compacted stone surface and a width of 4 metres. The route will be fenced on the northern side to contain livestock, with barbed wire on the field-side of the fence posts being protected by a strand of plain wire on the path-side of the posts. The southern side will be bordered by a post and plain wire fence as a safety measure due to the steep bank down to the new lake.
- 7.3. Whilst it is not possible to require the replacement of the stile at Point A as part of this diversion due to separate ownership, the stile at Point B will be replaced by a medium-mobility kissing gate to improve accessibility to the new route. In addition to being a necessary part of the restoration of this site, the proposed route should offer an improved experience to walkers through this newly landscaped area.

8. Compliance with our Diversions Criteria:

- 8.1. The Access Team 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 improved width and surfacing, and the change from a stile to a kissing gate at the eastern end should make this route much more accessible to less-abled path users.

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 A Gibson
Councillor Gibson has been consulted on this proposal but has made no comment.

- 10.2. Test Valley Borough Council
Test Valley Borough Council has been consulted on this proposal but has made no comment.
- 10.3. Mottisfont Parish Council
Mottisfont Parish Council has been consulted on this proposal but has made no comment.
- 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
Environment Department has been consulted on this proposal but has made no comment.
- 10.7. The Ramblers
The Ramblers has been consulted on this proposal and has welcomed this proposal, commending the operators on the sensitive restoration of this former quarry site. They have requested that a circular easy-access route be provided around the lake.
- 10.8. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has stated that they have no objection in principle. However they have raised concerns regarding the fencing on the lake side of the path, stating that they find it to be unnecessarily intrusive and recommending a low wooden hitching rail instead. A concern was also raised about the surfacing, requesting that the compacted stone surface be seeded to blend in better with the surroundings. A request was made for the section B-D to be dedicated as a public footpath to avoid the need to walk on the road along this section where there is no footway or verge, and for a route south of the new lake to be dedicated to create a circular route.
- 10.9. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal and has no objection to it. A comment was made about the stile remaining at point A and whether this could be changed to a kissing gate.
- 10.10. National Farmers Union
The National Farmers Union has been consulted on this proposal and has no objection to it.

11. Comments on Consultation Replies

- 11.1. Of the responses received from this consultation exercise, none have any objection to it.

- 11.2. Both the Ramblers and the Open Spaces Society have requested that a circular route around the lake be provided. This request has been passed on to the applicant, however it is unacceptable to the landowner due to the impact this would have on future use of the land for private fishing. Similarly the request by the Open Spaces Society for a route to be dedicated along the section B-D to avoid walkers using the highway has been rejected by the landowner due to the impact on private use of the land.
- 11.3. The concerns of the Open Spaces Society regarding the fencing on the lake side of the proposed route have also been discussed with the applicant. The purpose of a fence here is for reasons of safety, with the ground sloping steeply from the path down to the deep water of the lake. The fence that has been erected consists of wooden posts with three strands of plain wire to create a barrier that is relatively unobtrusive to path users and has been agreed prior to construction by Officers as part of the restoration plan for the site. The suggested change to a low wooden hitching rail style fence has been declined as this would not create an effective safety barrier.
- 11.4. The Open Spaces Society have requested that the path be seeded to blend in better with the surroundings. The applicant has agreed to do this work, however Officers do not feel that it would be appropriate in this case as the path will be fenced on both sides so the creation of surface vegetation will create a maintenance liability in the future. The edges of the newly constructed path will blend in better over time and Officers feel that this is the preferred option in this case.
- 11.5. LARA has made a request that the stile at point A be replaced by a kissing gate. This stile is in the ownership of the neighbouring landowner and as such it is not possible to require its replacement as part of this diversion. However this request has been logged with other network improvement requests, to be addressed should the opportunity arise in the future. The stile at point B at Dunbridge Lane will be replaced by a kissing gate.

12. Criteria for Assessment of the Proposal

- 12.1. Section 257(1) of the Town & Country Planning Act 1990 states that;

“...a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

 - a) in accordance with planning permission granted under Part III, or
 - b) by a government department ”

Planning permission was granted for this development by Hampshire County Council, ref 08/02603/CMAS.
- 12.2. This diversion is necessary as part of the approved restoration plan for the former Kimbridge Quarry site as the existing definitive line now passes over the lake that has been created.
- 12.3. 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 benefit from an improved width of 4 metres with a compacted stone surface and the existing stile at point B at Dunbridge Lane will be replaced with a kissing gate. In this way the proposed route should be more accessible to those with limited mobility than the existing route.

13. Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 257 of the Town & Country Planning Act 1990 and that it is necessary for the County Council to make the order in that:

- 13.1. The proposed diversion is required as part of the restoration plan for this former quarry site.
- 13.2. 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 part of Mottisfont Footpath No.4 from the current definitive alignment to the proposed alignment, 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"/>

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\Mottisfont FP4 - Div
Proposal File	VB\Div\Mottisfont FP4

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		