

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	30 June 2010
Title:	Application for a Public Path Diversion Order for parts of Footpath Nos.18, 728 and 740 in the Parish of Oakley
Reference:	1744
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 parts of Footpath Nos.18, 728 and 740 in the Parish of Oakley in the interests of the landowners to enable them to manage the land more effectively for the keeping of horses.
- 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 these paths in the interests of the landowners. The proposed alignments will be no less convenient or enjoyable than the current routes, and members are therefore requested to authorise the making of an Order under s119 of the Highways Act 1980 for these diversions.

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 parts of Footpath Nos.18, 728 and 740 in the Parish of Oakley, as shown on the attached large scale Plan 1.
- 3.2. It is proposed that the application for diversion of parts of Oakley Footpath Nos.18, 728 and 740 be approved under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that the diversion is in the interests of the landowners and that it is expedient that the line of these paths should be diverted.

4. Applicant:

- 4.1. Mark Hughes and Jacqueline Bott
10 Rectory Close,
Tadley, Hants RG26 3PH

5. Landowners:

- 5.1. The land coloured blue on Plan 2 is owned by:
Mark Hughes and Jacqueline Bott
10 Rectory Close,
Tadley, Hants RG26 3PH
- 5.2. The land coloured green on Plan 2 is owned by:
Mr and Mrs A G Small
Willow Cottage
Bulls Bushes Farm, Oakley
Basingstoke, Hants RG23 7EB
- 5.3. The land coloured yellow on Plan 2 is owned by:
Mr Matthew Raymond
Stoken Farm, Steventon
Basingstoke, Hants RG25 3BD

Both Mr Small and Mr Raymond have given their written consent to the proposal for the diversion of public rights of way across their land.

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

6.1. Current Routes

- 6.1.1. The section of Oakley Footpath No.18 affected by this proposal commences at Point A (GR 457184 148664) and proceeds in a north-easterly direction along the centre of a narrow field to a junction with Oakley Footpath No.740 at Point B (GR 457258 148720).

The length of the current route of Oakley Footpath No.18 between Points A and B is approximately 93 metres.

- 6.1.2. Oakley Footpath No.740 commences at Point B (GR 457258 148720) and proceeds in a north-easterly direction, through Point C where the definitive line is obstructed (GR 457276 148732), and then across a larger field to a junction with Oakley Footpath No.728 at Point D (GR 457330 148760).

The length of the current route of Oakley Footpath No.740 between Points B and D is approximately 84 metres.

- 6.1.3. The section of Oakley Footpath No.728 affected by this proposal commences at Point D (GR 457330 148760) and proceeds in a generally northerly direction along the centre of the field to a junction with the main section of Oakley Footpath No.728 at Point E (GR 457352 148867).

The length of the current route of Oakley Footpath No.728 between Points D and E is approximately 111 metres.

- 6.1.4. The main section of Oakley Footpath No.728 affected by this proposal commences at Point F (GR 457358 148882) and proceeds in a generally southerly direction, through Point E (GR 457352 148867), and then eastwards to Point N (GR 457362 148864).

The length of the current route of Oakley Footpath No.728 between Points F, E and N is approximately 25 metres.

- 6.1.5. The total length of the current routes affected by this proposal is approximately 313 metres.

6.2. Proposed Routes

- 6.2.1. The diverted route of Oakley Footpath No.18 will commence at Point A (GR 457184 148664) and proceed in a south-easterly direction for a short distance to Point G (GR 457188 148660) on the northern edge of a fence bordering a private driveway, and thence in a north-easterly direction to Point H (GR 457286 148724) which is on the fence line dividing the two fields.

The length of the diverted route of Oakley Footpath No.18 between Points A, G and H will be approximately 126 metres. The diverted section of Footpath No.18 will have a width of 2.0 metres throughout its length although it is not planned for this to be confined between fences.

- 6.2.2. The diverted route of Oakley Footpath No.740 will commence at Point H (GR 457286 148724) and proceed in a generally northerly and then north-easterly direction across a field and then along the edge of a wood and through Points J (GR 457280 148748), K (GR457310 148780) and L (GR 457350 148884) to terminate at Point F (GR 457358 148882) on the northern edge of a field.

The length of the diverted route of Oakley Footpath No.740 between Points H, J, K, L and F will be approximately 190 metres.

- 6.2.3. The diverted section of Footpath No.740 will have a width of 2.0 metres throughout its length. It is not planned for this to be confined between fences, although a post and rail fence will define the boundary with the woods to the west of section J-K-L.

- 6.2.4. The diverted route of Oakley Footpath No.728 will commence at Point F (GR 457358 148882) and proceed in a south-easterly direction for a short distance to Point M (GR 457362 148876) and thence in a generally southerly direction to Point N (GR 457362 148864) to rejoin the current alignment of this path.

The length of the diverted route of Oakley Footpath No.728 between Points F, M and N will be approximately 23 metres.

- 6.2.5. The diverted section of Footpath No.728 will have a width of 2.0 metres throughout its length although it is not planned for this to be confined between fences.

The total length of the proposed route is approximately 339 metres.

- 6.3. No structures or barriers will be specified in the Order for the diverted route, although it is within the power of the area Countryside Access Manager to authorise gates under s147 of the Highways Act 1980 if it becomes necessary to control the movement of livestock in the fields crossed by the path. Any structures authorised in this way will be required to offer a greater level of accessibility than those currently in place.

- 6.4. The Countryside Access Manager (North) 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.
- 6.5. 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.

7. Background to the Application

- 7.1. Mr Hughes and Ms Bott purchased the larger of the two fields in mid-2007, with the intention of improving the drainage and pasture of this land to support the grazing of at least one horse.
- 7.2. In January 2008, the landowners applied to Hampshire County Council for the diversion of those parts of the rights of way network that crossed the field, in order to facilitate the grazing of horses and to minimise the possibility of conflict with walkers using these routes.
- 7.3. In February 2008, the County Council went out to consultation on a proposal that would divert footpath sections C-D-E-F onto a route H-X-Y along the southern perimeter of the field.
- 7.4. This initial proposal generated strong opposition from the residents of the Bulls Bushes development to the south of the proposed route, on the grounds of diminished privacy and security. It was also opposed by the Ramblers Association, who favoured a route due east of Point D.
- 7.5. In order to accommodate the wishes of local residents, the landowners then proposed a new alignment along the western boundary of the field and embarked upon an extensive period of consultation with individuals representing walkers groups and the local Parish Council
- 7.6. In November 2008, the landowners made a planning application to Basingstoke & Deane Borough Council for a change of use from agricultural land to land for the keeping of horses, and planning permission was granted in January 2009.
- 7.7. At the end of January 2009, the County Council went out to consultation on a revised proposal that would divert footpath sections A-B-C-D-E-F onto a route A-G-H-J-K-L-F-M-N along the western boundary of the larger field, as shown on the attached plan.

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 routes (in total 339m) are slightly longer than the equivalent sections of the current alignments (in total 313m), but this difference is not considered to be significant. The obstruction at Point C has not been taken into account in considering this proposal.
- 8.3. The current structures, such as the small kissing gates at Points H and D, will be removed and replacements will only be licensed where this is necessary to control the movement of livestock. If this proves to be the case, medium-mobility kissing gates will be specified, which should make the footpaths more accessible to those with limited mobility.
- 8.4. The width for the current paths, as quoted in the Definitive Statement, is either unstated or varying between 1.8 and 2.0 metres. The new width of 2.0 metres throughout the diverted sections will be recorded in the Order and will standardise the width of the path available to the public.

9. Consultations with Other Bodies:

- 9.1. Local Member - Councillor Anna McNair Scott
Councillor McNair Scott has been consulted and has stated that she would support the changes proposed by the landowners.
- 9.2. Basingstoke & Deane Borough Council
The Head of Legal Services at Basingstoke & Deane Borough Council has been consulted. Although the Council acknowledged receipt of the consultation document, they did not make any further comment on this proposal.
- 9.3. Oakley Parish Council
The Parish Council initially supported the proposal by the Ramblers' Association for a route due east from Point D, but following a site meeting on 16th April 2009 the Clerk has confirmed that Oakley Parish Council would have no objection to either the westerly route (H-J-K-L-F) or the southerly route (H-X-Y), but would be concerned if the latter required removal of a number of trees that currently form a windbreak.
- 9.4. Countryside Access Manager
The Countryside Access Manager for North Hampshire has been consulted on this proposal and has specified the works that will be required to bring the footpath up to a condition suitable for use by the public on foot.

- 9.5. HCC – Highways Management
Highways Management has been consulted on this proposal but have made no comment.
- 9.6. HCC – Environment Department
The Environment Department has been consulted on this proposal but have made no comment.
- 9.7. Hampshire County Archivist
The County Archivist has consulted the Church Oakley and Wootton St Lawrence Tithe Maps and can find no evidence of the existence of higher rights on this particular route.
- 9.8. The Ramblers' Association
The Ramblers' Association has confirmed that they would object to an order if it is based on the consultation proposal along the H-J-K-L-F route, as maintenance and clearance of the route along the edge of the woods could represent an on-going problem. They are only willing to consider a route H-X-Y along the southern perimeter of the paddock that they feel would offer greater improvement for less-abled users, or a cross-field route to the east of Point D. Neither of these options is favoured by the applicants.
- 9.9. The Open Spaces Society
The Open Spaces Society has confirmed that they support the various proposals made by the Ramblers' Association from February 2008 onwards.
- 9.10. Land Access & Recreation Association (LARA)
LARA has confirmed that they have no objection to this proposal, although they would prefer that if any structures are included in the Limitations section of the Order they should conform to BS5709.
- 9.11. National Farmers Union
The National Farmers Union has confirmed that they have no objection to this proposal.
- 9.12. Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal but have made no comment.
- 9.13. Residents of the Bulls Bushes development
Mr and Mrs R James (Cattle Barn) have confirmed that they have no objections to the proposed changes.
Mr and Mrs A Small (Willow Cottage) have confirmed that they have no objection to the proposed changes and they are also cooperating in the diversion of section A-B-C onto the route currently in use by the public (A-G-H).

10. Comments on Consultation Replies

- 10.2 Of the responses received from the consultation exercise, the majority are either in favour of the proposal, or have no objection to it. The only exception is the response by the Ramblers' Association, which is also supported by the Open Spaces Society.

- 10.3 The North Hampshire Downs Group of the Ramblers' Association has commented at length on their preference for a southerly route H-X-Y, even though it would be confined between fences and require the felling of approximately six leylandii trees that currently form part of a windbreak just to the west of Point Y.
- 10.4 Officers consider that the H-J-K-L-F alignment along the edge of the woods is not likely to result in any material increase in the cost of maintaining the path. In addition, any structures authorised under s147 for stock control purposes will be specified as medium-mobility kissing gates, which should make the footpaths more accessible to those with limited mobility.
- 10.5 It is clear that the H-X-Y alignment would face strong opposition from local residents, to the point where the County Council might not consider it to be expedient to make an Order for diversion along this route.
- 10.6 The current definitive alignment of the footpath A-B-C-D-E-F is detrimental to the efficient management and development of the two fields that it crosses and Officers believe it would be beneficial if the definitive alignment accurately reflected the route actually in use by the majority of walkers on the ground.

11. Criteria for Assessment of the Proposal

- 11.1 The Council, as 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, both points of termination (A and F) remain unchanged, notwithstanding the minor realignment between Points F and N.
- 11.3 Section 119(6) of the Highways Act 1980 sets out the 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:
 - the diversion would have on public enjoyment of the path or way as a whole;
 - the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - 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 in response to the Order, Officers feel that the proposal meets these tests.

- 11.4 Section 29 of the Highways Act 1980 requires the County to have due regard to the needs of agriculture (including the keeping and breeding of horses),

forestry and nature conservation when considering the making of public path creation agreements. Officers confirm that there are no adverse effects on these activities associated with the making of this Order, and indeed it is likely that the changes will facilitate the grazing of horses in the larger of the two fields.

- 11.5 Section 69 of the Countryside and Rights of Way Act 2000 requires the County 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 route chosen for the diversion is essentially flat and any structures that are required for the control of livestock will offer a greater level of accessibility than those currently in place.

12 Conclusions:

- 12.1 Officers are of the opinion that the proposed diversion satisfies the criteria set out in section 119 of the Highways Act 1980 and that it is expedient for the Council to make an order in that:
- 12.1.1 The proposed diversion will facilitate the grazing of horses in the larger of the two fields, as sanctioned by Basingstoke & Deane Planning Permission BDB/69860.
- 12.1.2 The proposed diversion will not be substantially less convenient than the existing route, in that the diverted section A-G-H-J-K-L-F (339 metres) is only slightly longer than the equivalent section of the current route A-B-C-D-E-F (313 metres).
- 12.1.3 It is unlikely that there will be any material increase in the cost of maintaining the route at public expense.

13 Recommendations:

- 13.1 It is recommended that an Order should be made for the permanent diversion of:
- 13.1.1 Part of Oakley Footpath No.18, from the current definitive alignment to a new alignment between Points A, G and H
- 13.1.2 Oakley Footpath No.740, from the current definitive alignment to a new alignment between Points H, J, K, L and F
- 13.1.3 Part of Oakley Footpath No.728, from the current definitive alignment to a new alignment between Points F, M and N
- as shown on Plan 1.

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		