

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	27 April 2011
Title:	Application for a Public Path Diversion Order for part of Footpath No. 9 in the Parish of Rockbourne
Reference:	2883
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. The purpose of this paper is to consider an application to divert part of Rockbourne Footpath No.9. The application has been made in the interests of the landowner as the existing line runs through his property and has done for many years.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application.
- 1.3. Officers recommend that it is expedient to divert this footpath in the interests of the landowner. The proposed alignment will be no less convenient or enjoyable than the current route would be if reinstated, 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, bridleways or restricted byways 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, bridleway or restricted byway 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, bridleway or restricted byway 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 Rockbourne Footpath No.9, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Rockbourne Footpath No.9 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. Michael and Emma Price
Marsh Farm
Rockbourne
Fordingbridge
Hampshire
SP6 3NF

5. Landowners:

- 5.1. *(Section A-B-C-D on the attached plan)*
Michael and Emma Price
Marsh Farm
Rockbourne
Fordingbridge
Hampshire
SP6 3NF
- 5.2. *(Section D-E on the attached plan)*
Patrick Snowball
Marsh Barn
Rockbourne
Fordingbridge
Hampshire
SP6 3NF

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

6.1. Current Route

The existing route of Rockbourne Footpath No.9 affected by this proposal commences at Point A (SU 1186 1743) and proceeds in a generally south-easterly direction around Marsh Farm and through out-buildings, then through the gardens of both Marsh Farm and Marsh Barn to Point E (SU 1197 1730).

The length of the existing route between Points A-E is 175 metres. A width of 3ft is recorded for the section of path skirting Marsh Farm.

6.2. Proposed Route of Footpath Diversion

The proposed route for the diversion of Rockbourne Footpath No.9 commences at Point A (SU 1186 1743) and proceeds in a generally north-easterly, then south-easterly direction along field edges to Point E (SU 1197 1730).

The length of this proposed route between Points A-B-C-D-E is approximately 185 metres and will have a width of 2 metres throughout.

7. Background to the Application:

7.1. In 2006 Hampshire County Council received an application to divert part of Rockbourne Footpath No.9 in the interest of the landowner. The existing definitive line runs through outbuildings that were originally built some years ago and reconstructed with planning consent from New Forest District Council in 2006. However, the definitive line of the footpath was not diverted under the provisions of s257 of the Town & Country Planning Act 1990 at the time it became obstructed.

7.2. A period of informal consultation was carried out in order to achieve an acceptable proposal and HCC's full consultation commenced in June 2010. Since then further negotiations have been carried out to achieve a proposal that appears to be acceptable to all parties.

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 improved experience in terms of views and general character, taking the path away from the immediate curtilage of both Marsh Farm and Marsh Barn and onto nearby field edges. The proposed route will benefit from a level grass surface and will have a width of 2 metres. The existing shallow steps at Point B and the 3 pedestrian gates at Points C, D and E will also be retained, making the proposed route accessible by people of varying levels of ability

9. Costs:

- 9.1. The cost of advertising the Diversion Order, the administrative costs up to the point at which an Order (if contested) 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 further 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 Heron
Councillor Heron has been consulted on this proposal but has made no comment.
- 10.2. New Forest District Council
New Forest District Council has been consulted on this proposal and has no objection to it.
- 10.3. Rockbourne Parish Council
Rockbourne Parish Council has been consulted on this proposal but has made no comment.
- 10.4. Senior Countryside Access Ranger
The Senior Countryside Access Ranger 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. Hampshire County Archivist
The County Archivist has consulted the Rockbourne Tithe Map and found no evidence of higher rights on the affected route.
- 10.8. The Ramblers
The Ramblers has been consulted on this proposal and has highlighted how the used route has migrated since the obstruction was first reported to HCC in 2004, such that the route now proposed for diversion is further from the original line that it used to be. However, they have no objection to this proposal.
- 10.9. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal. An objection was raised regarding the narrow width and enclosed nature of the section B-C which creates an unwelcoming section that could be off-putting for path users.
- 10.10. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal but has made no comment.
- 10.11. National Farmers Union
The National Farmers Union has been consulted on this proposal and has no objection to it.
- 10.12. Cyclists Touring Club
The Cyclists Touring Club has been consulted on this proposal but has made no comment.
- 10.13. British Horse Society
The British Horse Society has been consulted on this proposal but has made no comment.

11. Comments on Consultation Replies:

- 11.1. Of the consultation responses received the majority have no objection to it.
- 11.2. The Open Spaces Society raised an objection regarding the narrow section B-C. In response to this objection the applicant has agreed to amend the proposal to widen and straighten this section to give a straight 2 metre wide path between the gap at Point B and the pedestrian gate at Point C, as shown on the attached plan. This provides a 2 metre width for the full length of the proposed route which is a significant improvement over the 3ft width recorded for the existing route past Marsh Farm.
- 11.3. The Ramblers have commented about how the proposed route has been moved further away from the recorded line since the blocked route was reported by them to HCC in 2004. The route that is now proposed for diversion is approximately 12 metres from the original boundary line and is screened by a beech hedge that has been planted to improve the privacy and security of Marsh Farm, as well as offer a more rural experience when using the footpath.

12. Criteria for Assessment of the Proposal:

- 12.1. The County Council, as the Highway Authority, has the power to make a Public Path Diversion Order under s119 of the Highways Act 1980, if it is considered expedient to do so in a particular case, and if it is in the interests of either the landowner or of the public.
- 12.2. 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 proposal both termination points remain the same.
- 12.3. 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:
 - 12.3.1. the diversion would have on public enjoyment of the path or way as a whole;
 - 12.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
 - 12.3.3. 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.

- 12.4. 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 and the Equality Act 2010. Officers confirm that the requirements of those with limited mobility have been taken into account when developing the proposal for the new route, which will be accessible in that it will be stile-free and will have a level surface.

13. Conclusions:

- 13.1. Officers are of the opinion that the proposed diversion of Rockbourne Footpath No.9 satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make the order, in that:
 - 13.1.1. The termination points are not altered by this proposal.
 - 13.1.2. The proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of views and general character.
 - 13.1.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

14. Recommendations:

- 14.1. That an Order is made diverting Rockbourne Footpath No.9 from A-E to A-B-C-D-E, as shown on the accompanying plan.

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

Hampshire safer and more secure for all:	yes
Corporate Improvement plan link number (if appropriate):	
Maximising well-being:	yes
Corporate Improvement plan link number (if appropriate):	
Enhancing our quality of place:	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>
General Correspondence	I:\Recreation and Heritage\Countryside Service\Rights of Way\Vicky Bowskill\Orders by Parish\Rockbourne FP9 - Div
Proposal File	VB\Div\Rockbourne FP9\5025

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	Low	The proposed route will have three shallow steps, three pedestrian gates and a level grass surface. As such it will be more accessible for people with a range of levels of ability, when compared to the existing definitive public footpath.	
Crime Prevention (under Section 17)	Low	The proposed route takes the path away from the immediate curtilage of Marsh Farm and Marsh Barn, improving the security of the property and reducing the real or perceived possibility of crime resulting from the proximity of the path. Path users are likely to feel more comfortable walking a route that does not take them so close to a private dwelling.	
Environmental	Low	Developing an attractive and robust network of public rights of way throughout the county will help to encourage non-motorised users to make use of their local area, avoiding use of the vehicular road network as far as possible.	