

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	27 October 2010
Title:	Application for a Public Path Diversion Order for part of Footpath No.3 in the Parish of Romsey Extra
Reference:	2207
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 temporarily divert part of Romsey Extra Footpath No.3 for a period of ten years to allow for mineral extraction on the site for which planning permission has been granted, Hampshire County Council planning application number 07/02771/CMAS. This path forms part of the Test Way.
- 1.2. This paper seeks to provide members with the necessary information with which to determine the application. This diversion is necessary to allow the development to be carried out in accordance with planning permission already granted. 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 stopping up or 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.

Section 261(2) of the Town & Country Planning Act 1990 allows for any Order made under Section 257 to be for a temporary period;

- (2) Where a competent authority within the meaning of section 257 are satisfied-
 - (a) that an order made by them under that section for the stopping up or diversion of a footpath, bridleway or restricted byway is required for the purpose of enabling minerals to be worked by surface workings; and
 - (b) that the footpath, bridleway or restricted byway can be restored, after the minerals have been worked, to a condition not substantially less convenient to the public,

The order may provide for the stopping up or diversion of the footpath, bridleway or restricted byway during such period as may be prescribed by or under the order, and for its restoration at the expiration of that period.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to temporarily divert part of Romsey Extra Footpath No.3 for a period of ten years, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Romsey Extra Footpath No.3 be approved under Section 257 of the Town and Country Planning Act 1990, on the grounds that the diversion is necessary to carry out the development for which planning permission that has been granted, and that it is expedient that the line of this path should be diverted.

4. Applicant:

- 4.1. Raymond Brown Minerals & Recycling Ltd
Lee Lane
Nursling
Southampton
Hampshire
SP16 0AD

5. Landowners:

- 5.1. Agent Double Ltd
c/o Blake Laphorn Solicitors
New Kings Court
Tollgate
Chandler's Ford
Eastleigh
Hampshire
SO53 3LG

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

6.1. Current Route

The section of Romsey Extra Footpath No.3 affected by this proposal commences at point A at Old Salisbury Lane and proceeds in a generally south-easterly direction to point B at the field corner.

The length of this section is approximately 175 metres. There is no recoded width for this section.

6.2. Proposed Route

The diverted section of Romsey Extra Footpath No.3 will commence at Old Salisbury Lane and proceed in a generally easterly direction to point C, then in southerly direction along a field boundary, over a footbridge at point D, across a vehicular access track to rejoin the existing definitive line at point B.

The diverted section is approximately 230 metres in length and will have a width of 2.5 metres throughout with a grass surface, enclosed between the field boundary and plain wire fencing.

7. Background to the Application:

- 7.1. This application has been made in accordance with planning permission that has been granted by this Committee for sand and gravel extraction at Roke Manor by Raymond Brown Minerals and Recycling Ltd. This is a temporary diversion to last for a period of 10 years during the operation of the site.
- 7.2. The current definitive line passes along an unmade track from point A, and on through an area used for the keeping of pigs to point B at the field corner. The proposed route will turn east from the road and follow the inside of the field boundary between points A and B. The path will be enclosed by a plain wire security fence and will have a width of 2.5 metres to be kept clear of encroaching vegetation. There will be a footbridge with handrails over a conveyor at point D and warning signs will be erected on the access road that will run adjacent to it to warn vehicles of pedestrians crossing.
- 7.3. When this temporary diversion expires at the end of the 10 year period the path will be reinstated in full on the current definitive line. This path forms part of the Test Way.

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.

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 Roy Perry
Cllr Roy Perry 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. Romsey Extra Parish Council
Romsey Extra Parish Council has been consulted on this proposal and has no objection to it.
- 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. Hampshire County Archivist
The County Archivist has consulted the Romsey Tithe Map and has found no evidence that would point to the existence of higher rights on this route.
- 10.8. The Ramblers
The Ramblers has been consulted on this proposal and has no objection to it. They raised a query regarding the provision of a car park for walkers on Old Salisbury Lane that had been proposed as part of this development.
- 10.9. The Open Spaces Society
The Open Spaces Society has been consulted on this proposal and has no objection to it.
- 10.10. Land Access & Recreation Association (LARA)
The Land Access & Recreation Association has been consulted on this proposal and has no objection to it.
- 10.11. 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 to this consultation, none has any objection to the proposal.

- 11.2. With regard to the comment of the Ramblers, it is correct to say that the original planning proposal did contain the provision of a car park. However, following a survey of the site, it was considered that, due to poor visibility, the car park was not feasible and has had to be removed from the proposal. No alternative car parking sites are available.

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 07/02771/CMAS.

- 12.2. 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.

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 temporary diversion is necessary, for a period of ten years, to allow mineral extraction to be carried out in accordance with planning permission that has been granted.
- 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 Romsey Extra Footpath No.3 from the current definitive alignment to the proposed alignment for a period of ten years, 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\Romsey Extra FP3 - Div
Proposal File	VB\Div\Romsey Extra FP3

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		