

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date of Decision:	28 July 2010
Title:	Application for a Public Path Diversion Order for part of Footpath No.28 in the Parish of Sherfield English
Reference:	1884
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 part of Sherfield English Footpath No.28 in the interests of the landowner to enable him to manage the land more effectively for agricultural purposes. The proposal also offers benefits to the public, including an improvement in the structures on the route and segregation from cows with calves at foot that can present a danger to path users.
- 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 this path in the interests of the landowner. The proposed alignment will be no less convenient or enjoyable than the current route, 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 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 part of Sherfield English Footpath No.28, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Sherfield English Footpath No.28 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. Mr Michael Newgass
Gambledown Farm
Sherfield English
Romsey
Hampshire
SO51 6JU

5. Landowners:

- 5.1. Mr Michael Newgass
Gambledown Farm
Sherfield English
Romsey
Hampshire
SO51 6JU

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

6.1. Current Routes

The section of Sherfield English Footpath No.28 affected by this proposal commences at point A (GR 429181 124346) at a stile and then heads in a generally southerly direction along the eastern side of a hedge. The route passes through two kissing gates at Points E and F with a band of trees between, before continuing along the eastern side of the hedge to a junction with Sherfield English Footpath No.27 at Point B (GR 429152 123909).

The length of Sherfield English Footpath No.28 between Points A and B is approximately 440 metres. There is no recorded width for this section.

6.2. Proposed Routes

The proposed realignment of this section of Sherfield English Footpath No.28 will commence at Point C (GR 429171 124346), at a medium mobility kissing gate and proceed in a generally southerly direction along the western side of the same hedge to a junction with Sherfield English Footpath No.27 via a field gate at Point D (GR 429142 123909).

The length of the proposed new footpath between Points C and D will be approximately 440 metres and the new footpath will have a width of 2.0 metres throughout its length.

7. Background to the Application

7.1. Gambledown Farm specialise in the breeding of traditional English Shorthorn cattle and the field through which the existing definitive line of the path passes is, of necessity, used to keep cows with calves at foot during the spring and autumn, being immediately adjacent to the farm buildings. Whilst there have been no reported incidents of conflict between cattle and walkers on this particular footpath, there is always a potential risk, especially to walkers with dogs which could provoke a protective reaction from cows with their new-born calves.

7.2. The route of the proposed diversion passes through the adjacent field and, whilst cattle will also be kept in this field, there will be no occasion on which cows with new-born calves will be present.

7.3. If approved the Order would be made in the interests of the landowner. However, it is believed that this proposal will benefit the public in that there will be reduced risk from livestock and an improvement in the number and condition of structures on the route. The current route is accommodated by one stile and two kissing gates, whilst the proposed route will have one medium-mobility kissing gate and a field gate allowing for easier passage for walkers. The water trough currently on the diverted route will also be relocated away from the line of the path to avoid damage to the surface and intimidation to walkers when cattle gather.

- 7.4. 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.

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 a similar experience in terms of surfacing and views and the length is approximately the same. One stile and two kissing gates on the existing route would be replaced by one medium-mobility kissing gate and one unlocked field gate that would make the proposed route easier to use for less-abled path users.
- 8.3. There is no recorded width for this section of path so by recording a width of 2 metres throughout this path can be more effectively protected in the future.

9. Consultations with Other Bodies:

- 9.1. Local Member – Cllr R Perry
Councillor Perry has been consulted on this proposal but has made no comment.
- 9.2. Test Valley Borough Council
Test Valley Borough Council has been consulted on this proposal and have acknowledged the letter, but have not made any comment.
- 9.3. Sherfield English Parish Council
Sherfield English Parish Council has been consulted on this proposal but have made no comment.
- 9.4. 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.
- 9.5. HCC – Highways Management
Highways Management has been consulted on this proposal but have made no comment.
- 9.6. HCC – Environment Department
Environment Department has been consulted on this proposal but have made no comment.
- 9.7. Hampshire County Archivist
The County Archivist has consulted the Sherfield English Tithe Map and found no evidence of higher rights on the affected route.

9.8. The Ramblers

The Ramblers has been consulted on this proposal and are in support of it, offering their thanks for the landowner's consideration to walkers and the way he has kept rights of way on his land in good order over the years.

9.9. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal but has made no comment.

9.10. Land Access & Recreation Association (LARA)

The Land Access & Recreation Association has been consulted on this proposal and are in favour of it, commenting that the proposal is 'eminently sensible'.

9.11. National Farmers Union

The National Farmers Union has been consulted on this proposal and supports it as a 'sensible option'. They offered some statistics on the issue of cattle and rights of way as follows;

"Between April 1996 and March 2006, 46 incidents involving cattle and members of the public were investigated by the HSE across Britain. Seven resulted in death. There have been several landmark cases since then, reinforcing the risk of bringing together walkers with dogs and cattle with calves at foot."

10. **Comments on Consultation Replies**

- 10.1. Of the responses received from this consultation exercise, all are either in support, or have no objection to it.
- 10.2. Whilst there have been no reported incidents of problems with cattle and walkers on this particular path, this issue is one that has gained a high profile in recent years. This proposal would appear to be welcomed by many of those consulted on it so far and would resolve the potential risk on this path.

11. **Criteria for Assessment of the Proposal**

- 11.1. The County Council, as the 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 termination points will be moved only a short distance to the opposite side of the hedge.
- 11.3. 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:
 - 11.3.1. the diversion would have on public enjoyment of the path or way as a whole;

- 11.3.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
- 11.3.3. 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.

- 11.4. 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. 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 would have two structures rather than three and those structures would be of a far more accessible standard than structures on the existing route. In this way the proposed route should be more accessible to those with limited mobility.

12. Conclusions:

Officers are of the opinion that the proposed diversion satisfies the criteria required by section 119 of the Highways Act 1980 and that it is expedient for the County Council to make the orders in that:

- 12.1. The proposed change would enable the landowner to manage the land more effectively for agricultural purposes, and would improve safety for path users.
- 12.2. The proposed diversion will not be substantially less convenient than the existing route, and it can be argued that the proposed route offers an improved experience in terms of accessibility and safety.
- 12.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

13. Recommendations:

- 13.1. That an Order is made diverting Sheffield English Footpath No.28 from the current definitive alignment to an alignment following the route D-C, 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"/>

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		