

**HAMPSHIRE COUNTY COUNCIL**

**Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	28 April 2010
<b>Decision Title:</b>	Application for a Public Path Extinguishment Order for part of Restricted Byway No. 18c in the Parish of Silchester, and for a Public Path Diversion Order for part of Footpath No.18b in the Parish of Silchester and Footpath Nos.29 & 30 in the Parish of Mortimer West End
<b>Decision Reference:</b>	1561
<b>Report From:</b>	Director of Culture, Communities and Rural Affairs

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**EXECUTIVE SUMMARY**

**1) Summary of Decision Area:**

- 1.1. The northern section of Silchester Restricted Byway No.18c, between points B and C on the attached plan, passes through the grounds and swimming pool of Haskers Farm, ending at point C on the north side of the swimming pool before the route continues north as Silchester Footpath No.18b.
- 1.2. It is proposed to extinguish that part of Silchester Restricted Byway No.18c that passes through Haskers Farm between points B and C, and to divert Silchester Footpath No.18b slightly to the east to run along the western edge of an arable field from point B, just south of the entrance to Haskers Farm, through point E and for approximately 275 metres north to point F at the northern field boundary where it would turn west to reconnect with the existing route of Silchester Footpath No.18b at point D.
- 1.3. As part of this diversion it has been possible to gain the agreement of the neighbouring landowner to divert parts of Mortimer West End Footpath Nos.29 and 30 onto their used routes between points F, J and H, and points H, K and L. Currently Mortimer West End Footpath No.29 ends at the parish boundary at point G and does not connect with the ongoing route of Silchester Footpath No.18b, leaving a gap in the recorded network between points G and D. Whilst in practice the paths do connect on the ground this has been an anomaly on the Definitive Map that can be resolved as part of this proposal.
- 1.4. Members are requested to approve the recommendation that an Order should be made for the extinguishment of part of Silchester Restricted Byway No.18c and the permanent diversion of part of Silchester Footpath No.18b, and Mortimer West End Footpath Nos.29 & 30 as shown on the accompanying plan.

## **2) Legal Framework for the Decision:**

### **Diversion**

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.

### **Extinguishment**

Orders for the Extinguishment of Footpaths and Bridleways may be made under Section 118 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, on the grounds that:-

“the path or way is not needed for public use”

Members must be satisfied that it is expedient to extinguish the right of way, having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.

## **3) Summary of Issues to be Decided:**

- 3.1. Officers believe that it is expedient to divert these paths in the interests of the landowner. 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 the diversions. It is considered that, so long as the diversion proposals are confirmed, Restricted Byway No.18c between points B and C will not be needed and so should be extinguished.

**4) Recommendation:**

- 4.1 That an Order is made extinguishing part of Silchester Restricted Byway No.18c between points B (GR 465780 161772) and C (GR 465758 161879).
- 4.2 That an Order is made diverting Silchester Footpath No.18b between points B (GR 465780 161772) and D (GR 465735 162035) and Mortimer West End Footpath No.29 between points F (GR 465757 162037) and H (GR 466080 162275), and Footpath No.30 between points H (GR 466080 162275) and L (GR 466119 162154) as shown on the accompanying plan.

**MAIN REPORT:**

**1. Purpose of Report:**

- 1.1. Hampshire County Council has received an application to extinguish part of Silchester Restricted Byway No.18c and to divert part of Silchester Footpath No. 18b and Mortimer West End Footpaths No.29 & 30, as shown on the attached large scale plan.
- 1.2.1 It is proposed that the application for extinguishment of part of Silchester Restricted Byway No.18c be approved under Section 118 of the Highways Act 1980, as amended by the Wildlife & Countryside Act 1981, on the grounds that it is not needed for public use and that it is expedient that the line of this path should be extinguished, provided that as the related diversion is confirmed.
- 1.2.2 It is proposed that the application for diversion of part of Silchester Footpath No.18b and Mortimer West End Footpaths No.29 & 30 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 lines of these paths should be diverted.

**2. Applicant:**

- 2.1. Brian Patrick Watson & Deborah Watson  
Haskers Farm  
Clappers Farm Road  
Silchester  
Reading  
RG7 2LG

**3. Landowners:**

- 3.1. *Silchester Restricted Byway No.18c between points B and C;*  
Brian Patrick Watson & Deborah Watson  
Haskers Farm  
Clappers Farm Road  
Silchester  
Reading  
RG7 2LG
- 3.2. *Diverted route of Silchester Footpath No.18b between points B-E-F-D and affected sections of Mortimer West End Footpaths No. 29 between points F and H, and No.30 between points H and L;*  
Stuart Macklin  
Brickledons Farm  
Silchester  
Reading  
RG7 2LG

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

**4.1. Current Routes**

**4.1.1. Silchester Restricted Byway No.18c**

This path commences at point A (GR 465817 161724) at the U251 Odd Lane and proceeds in a generally northerly direction as an access track, through the gate to Haskers Farm at point B (GR 465780 161772), passing through the garden and swimming pool to point C (GR 465758 161879).

**4.1.2. Silchester Footpath No.18b**

The part of this path affected by this proposal commences at point C (GR 465758 161879) and proceeds in a generally northerly direction through the boundary fence of Haskers Farm and then along a field boundary to point D (GR 465735 162035).

**4.1.3. Mortimer West End Footpath No.29**

The part of this path affected by this proposal commences at point G (GR 465831 162066) and proceeds in a generally north-easterly direction across field to point H (GR 466080 162275) where the path passes through a strip of trees and scrub between fields.

**4.1.4. Mortimer West End Footpath No.30**

The part of this path affected by this proposal commences at point H (GR 466080 162275) and proceeds in a generally southerly direction across field to point L (GR 466119 162154) where it joins a surfaced farm track.

## 4.2. Proposed Routes

### 4.2.1. Silchester Restricted Byway No.18c

It is proposed to extinguish all public rights north of point B (GR 465780 161772) so the remaining route of the restricted byway would commence at point A (GR 465817 161724) and proceed along an access track to point B where it would join the diverted route of Silchester Footpath No.18b.

### 4.2.2. Silchester Footpath No.18b

The proposed route of this path would commence at point B (GR 465780 161772) leaving the access track in an easterly direction and going up a slight bank to point E (GR 465785 161778) before turning north along an arable field edge to point F (GR 465757 162037). The route then turns in a westerly direction to rejoin the existing definitive line at point D (GR 465735 162035).

### 4.2.3. Mortimer West End Footpath No.29

The proposed route of Mortimer West End Footpath No.29 would commence at point F (GR 465757 162037) at a junction with Silchester Footpath No.18b and proceeds in a generally north-easterly direction following a line of electricity pylons to point J (GR 466016 162146) where it turns north-north-east to point H (GR 466080 162275) at the field boundary.

### 4.2.4. Mortimer West End Footpath No.30

The proposed route of this path commences at point H (GR 466080 162275) at a junction with Mortimer West End Footpath No.29 at the field boundary and proceeds in a generally south-easterly direction across field to point L (GR 466119 162154) where it rejoins the existing definitive line onto a farm track.

4.3. The cost of advertising the Diversion and Extinguishment Orders, 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.

## 5. **Background to the Application**

5.1. The applicant has recently moved into Haskers Farm and is concerned that a legal right of way across his property has been obstructed for some time by fences and by a swimming pool immediately east of the house. With the agreement of the neighbouring farmer, he has therefore proposed the diversion of public footpath rights onto a new alignment following the headland of an adjacent field, that would be free of obstruction.

5.2. The Definitive Map appears to be anomalous in this area in that Silchester Footpath No.18b is linked to the adopted highway at both ends by short lengths of restricted byway. The route of both the footpath and restricted byway sections once had a dual status as an unclassified road (U251), and Road Used as a Public Path (RUPP) No.18. This route was subject to a Stopping Up Order under s116 of the Highways Act 1980 in 1983, subject to the reservation of footpath rights, but because it was recognised that the properties at either end of

this lane would require vehicular access to their properties it was decided at that time to retain the status of RUPP at either end linking these properties to the adopted road, with the route in between being downgraded to public footpath. More recently, following the Natural Environment & Rural Communities Act 2006, the RUPP sections have been reclassified as Restricted Byway and as such no longer carry public vehicular rights.

- 5.3. The opportunity is also being taken to rationalise two nearby routes (Mortimer West End Footpath Nos. 29 and 30) from the current cross-field alignments to ones which follow paths currently in use by the public and which make better connections with other parts of the network. In particular, Mortimer West End Footpath No.29 is currently a cul-de-sac route with no recorded connection across the parish boundary to Silchester Footpath No.18b.
- 5.4. In order to achieve the desired result, two Orders will need to be processed in parallel, with the confirmation of the Extinguishment Order being made a condition for the confirmation of the Diversion Order. It is not possible to also make the reverse condition apply, but Officers will ensure that the two Orders do not get out of step and that both changes come into effect at the same time.

## **6. Compliance with our Diversions Criteria**

- 6.1. 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.
- 6.2. The diverted routes are very similar in length to the existing routes and are largely comparable in character.
- 6.3. The fact that sections of Silchester Restricted Byway No.18c and Footpath No.18b are currently obstructed by the garden boundaries and swimming pool at Haskers Farm will be resolved by this proposal, with the definitive route and status being brought into line with the used route on the ground.
- 6.4. There will be no structures required on the proposed routes, providing open access to allow for a range of levels of ability.
- 6.5. The width for the current route of Mortimer West End Footpath No.29 is recorded in the Definitive Statement as 9 feet. No width is recorded for the other routes affected by this proposal and it is proposed to record a width of 2 metres for these routes so they can be more effectively protected in the future.

## **7. Consultations with Other Bodies:**

- 7.1. Local Member – Cllr Chapman  
Councillor Chapman has been consulted on this proposal.
- 7.2. Basingstoke & Deane District Council  
Basingstoke & Deane District Council have been consulted on this proposal.

7.3. Silchester Parish Council

Silchester Parish Council have been consulted on this proposal and have no objection to it.

7.4. 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 footpath up to a condition suitable for use by the public on foot.

7.5. HCC – Highways Management

Highways Management has been consulted on this proposal and confirm they have no objection.

7.6. HCC – Environment Department

Environment Department has been consulted on this proposal.

7.7. Hampshire County Archivist

The County Archivist has consulted the Silchester tithe map and has found no evidence of higher rights that correspond with the rights of way in question. There is no enclosure map for Silchester. At the time of the enclosure awards Mortimer West End was in Berkshire and therefore Hampshire does not hold a tithe map for that area.

7.8. The Ramblers' Association

The Ramblers' Association has been consulted on this proposal and has confirmed they have no objection to it.

7.9. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal and has no objection to it, although they would prefer to see an east-west link included between points J and L.

7.10. Land Access & Recreation Association (LARA)

The Land Access & Recreation Association has been consulted on this proposal.

7.11. National Farmers Union

The National Farmers Union has been consulted on this proposal.

7.12. Cyclists Touring Club

The Cyclists Touring Club has been consulted on this proposal.

7.13. The British Horse Society

The British Horse Society has been consulted on this proposal and has no objection to it.

7.14. The British Driving Society

The British Driving Society has been consulted on this proposal.

## **8. Comments on Consultation Replies**

- 8.1. Of the responses received from this consultation exercise, none have any objection to it.
- 8.2. The Open Spaces Society have requested that an east-west link between points J and L be included in this package. Officers have raised this with the landowner, who is the neighbour of the applicant, however he is not willing to dedicate another cross-field link that would impose a further maintenance liability through his crop.

## **9. Criteria for Assessment of the Proposal**

- 9.1. 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.
- 9.2. The County Council, as the Highway Authority, has the power to make a Public Path Extinguishment Order if the path is considered to be no longer needed for public use. It can be argued that the section of Silchester Restricted Byway No.18c is not capable of use, other than on foot, even if it were not obstructed.
- 9.3. 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 the termination points would not be altered, other than for Mortimer West End Footpath No.29 where the cul-de-sac termination would be continued to link in with the path network.
- 9.4. 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:
  - 9.4.1. the diversion would have on public enjoyment of the path or way as a whole;
  - 9.4.2. the coming into operation of the order would have as respects other land served by the existing public right of way; and
  - 9.4.3. 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.

- 9.5. 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 routes. The proposed routes are free from structures, whereas to open up the current definitive line would require several structures through existing boundaries. Therefore the proposed routes should be more accessible to those with limited mobility.

## **10. Conclusions:**

Officers are of the opinion that the proposed diversions and extinguishment satisfy the criteria required by sections 118 and 119 of the Highways Act 1980 and that it is expedient for the County Council to make the orders in that:

- 10.1. The proposed changes will facilitate the management of both the grounds at Haskers Farm and the neighbouring arable fields.
- 10.2. The proposed diversion will not be substantially less convenient than the existing route, being of a similar distance, following the routes currently used on the ground and allowing for open access, free of the need for any structures.
- 10.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the routes at public expense.

## **11. Recommendations**

- 11.1. That an Order is made extinguishing part of Silchester Restricted Byway No.18c between points B (GR 465780 161772) and C (GR 465758 161879) as shown on the accompanying plan.
- 11.2. That an Order is made diverting Silchester Footpath No.18b between points B (GR 465780 161772) and D (GR 465735 162035) and Mortimer West End Footpath No.29 between points F (GR 465757 162037) and H (GR 466080 162275) & Footpath No.30 between points H (GR 466080 162275) and L (GR 466119 162154) 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.)

*(Quote list of documents here: e.g. list the relevant letters, memos, etc. and their location)*

<u>Document</u>	<u>Location</u>
General Correspondence	I:\Recreation and Heritage\Countryside Service\ Rights of Way\Vicky Bowskill\Diversions\Silchester18b,c
Proposal File	VB/Div/Silchester18b,c

**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		

