

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	12 January 2011
Title:	Application for a Public Path Diversion Order for part of Footpath No.30 and dedication of a Public Footpath between Footpath No.17 and Bridleway No.32 in the Parish of Sopley
Reference:	2478
Report From:	Director of Culture, Communities and Rural Affairs

Contact name: Vicky Bowskill

Tel: 01962 846891

Email: vicky.bowskill@hants.gov.uk

1. Executive Summary:

- 1.1. The purpose of this paper is to consider an application to divert part of Sopley Footpath No.30 and to dedicate a public footpath linking Sopley Footpath No.17 and Sopley Bridleway No.32. The application has been made in the interests of the landowner to allow the land to be managed more effectively for agricultural purposes.
- 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 in that the proposed alignment will not be significantly 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.
- 1.4. It is further recommended that the offer to dedicate a public footpath linking Sopley Footpath No.17 and Sopley Bridleway No.32 be accepted as it provides a useful off-road link between these public paths for pedestrians. Members are requested to authorise the making of a deed of dedication for this bridleway under s25 of the Highways Act 1980.

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.

HIGHWAYS ACT 1980 Section 25: Creation of a footpath or bridleway by agreement

- (1) A local authority may enter into an agreement with any person having the necessary power in that behalf for the dedication by that person of a footpath, bridleway or restricted bridleway over land in their area. An agreement under this section is referred to in this Act as a "public path creation agreement".
- (2) For the purposes of this section "local authority" –
 - (a) in relation to land outside Greater London means a county council, a district council...
- (3) Before entering into an agreement under this section a local authority shall consult any other local authority or authorities in whose area the land concerned is situated.
- (4) An agreement under this section shall be on such terms as to payment or otherwise as may be specified in the agreement and may, if it is so agreed, provide for the dedication of the footpath or bridleway or restricted byway subject to limitations or conditions affecting the public right of way over it.
- (5) Where a public path creation agreement has been made it shall be the duty of the local authority, who are a party to it, to take all necessary steps for securing that the footpath, bridleway or restricted byway is dedicated in accordance with it.
- (6) As soon as may be after the dedication of a footpath, bridleway or restricted byway in accordance with a public path creation agreement, the local authority who are party to that agreement shall give notice of the dedication by publication in at least one local newspaper circulating in the area which the land to which the agreement related is situated.

3. Purpose of Report:

- 3.1. Hampshire County Council has received an application to divert part of Sopley Footpath No.30 and to dedicate a public footpath linking Sopley Footpath No.17 and Sopley Bridleway No.32, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Sopley Footpath No.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 line of this path should be diverted.
- 3.3. It is proposed that the dedication of a public footpath linking Sopley Footpath No.17 and Sopley Bridleway No.32 be accepted.

4. Applicant:

- 4.1. Cllr G.N.Lewis on behalf of Sopley Parish Council
Chapel Cottage
Ripley
Nr Christchurch
Dorset
BH23 8ES

5. Landowners:

- 5.1. Avon Tyrrell Estate Nominees (No.1) Ltd
Court Farm
Avon
Christchurch
Dorset
BH23 7BG

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

6.1. Current Route

The section of Sopley Footpath No.30 affected by this proposal commences at Point A (GR 417122 98384) and proceeds in a generally south-westerly direction across fields to Point B (GR 416636 98016).

The length of Sopley Footpath No.30 between Points A and B is approximately 615 metres. There is no recorded width for this section.

6.2. Proposed Route of Footpath Diversion

The proposed route of the diverted section of Sopley Footpath No.30 commences at Point A (GR 417122 98384) and proceeds in a generally southerly direction along a field edge next to a small brook to Point C (GR 417177 97919) at a junction with Sopley Footpath No.16.

The length of the proposed route between Points A and C is approximately 475 metres and will have a width of 2 metres, to be set 2 metres away from the bank of the brook.

6.3 Proposed Route of Footpath to be Dedicated

The proposed route of the footpath to be dedicated linking Sopley Footpath No.17 to Sopley Bridleway No.32 commences at Point D (GR 416882 98401) and proceeds in a generally westerly direction to Point E (GR 416710 98412).

The length of the path between Points D and E is approximately 170 metres and will have a width of 2 metres.

7. Background to the Application:

- 7.1. This diversion has been applied for by Sopley Parish Council to improve the local path network following concerns regarding the disturbance of Sopley Footpath No.30. The existing path runs through fields and is often very muddy with sections ploughed up for short periods due to legitimate land management activities.
- 7.2. The proposed route follows the tree-lined bank of a small brook along a grassed field edge, creating an attractive route that is free of the disruption of agricultural activity. This will clearly be of benefit to the landowner, enabling them to manage this land more effectively for agricultural purposes.
- 7.3. Stiles on this route and Sopley Footpath No.16 have recently been replaced with more accessible structures to create a valuable stile-free route between Bransgore and Sopley.

8. Compliance with our Diversions Criteria:

- 8.1. The Countryside 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.

- 8.2. The proposed route offers an improved experience in terms of views and general character. Several stiles on the proposed route and Sopley Footpath No.16 have recently been replaced with gates or kissing gates to improve the accessibility between Bransgore and Sopley.

9. Costs:

- 9.1. The cost of advertising the Diversion Order and dedication, and the cost of any physical works required on the proposed route will be met by the applicant. It has been agreed in this case that the administrative costs of processing the Order will be waived, in the interests of partnership working with Sopley Parish Council.
- 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 Rippon-Swaine
Councillor Rippon-Swaine 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 is in support of it.
- 10.3. Sopley Parish Council
Sopley Parish Council is the applicant for this proposal due to the local desire for the path to be improved.
- 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 Sopley 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 on this proposal but has made no comment.

10.9. The Open Spaces Society

The Open Spaces Society has been consulted on this proposal and raised some concerns regarding the condition of the existing route and requested that the link between Sopley Footpath No.17 and Sopley Bridleway No.32 be dedicated as public footpath.

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 supports it on the grounds of improved agricultural efficiency and improved experience for walkers.

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.

10.14. Local Residents

One local resident has expressed concerns that if travelling from Point A to Point B, the proposed diversion adds significantly to the distance travelled. He was also concerned that this diversion could prompt the farmer to remove hedgerows and make one large field, to the detriment of wildlife, and that the replacement of the existing stiles would detract from the rural charm of the footpath.

11. Comments on Consultation Replies:

11.1. The Open Spaces Society has requested that the link between Sopley Footpath No.17 and Sopley Bridleway No.32 be dedicated as public footpath. This has been agreed by the landowner and added to the current proposal.

11.2. One local resident raised concern that, if travelling from Point A to Point B (620m), the diversion would result in a significant increase in the distance travelled. The nearest alternative route will be via A-E-B (830m). However if travelling southwards from Point A and along Sopley Footpath No.16 towards Bransgore the proposal does create a significantly more direct route (870m).

11.3. Concern regarding the potential for the landowner removing hedgerows to create one large field if the path is diverted are not considered to be relevant. The presence of the path across the field in no way prevents the landowner from doing this if they so wished and there is no indication at the current time that this is their intention.

- 11.4. The concern that the replacement of the existing stiles would detract from the rural charm of the footpath are not considered to be relevant. Hampshire County Council is required to have regard to the needs of people with disabilities in all areas of work. Every opportunity is taken to improve accessibility and the stiles on this route have already been replaced with kissing gates or gates.

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 (as in this case) it is in the interests of the landowner.
- 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 on a highway carrying a like right of way that is connected to the original termination point. In this proposal one termination at Point A remains the same. The new termination at Point C connects to Sopley Footpath No.16 which is connected to the original termination at Point B.
- 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. The County Council also has a power to accept the dedication of new public rights of way under s25 of the Highways Act 1980 where there is sufficient public benefit to justify the future cost of maintaining the proposed route.
- 12.5. 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 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 more accessible than the existing route of Sopley Footpath No.30 in that it will be stile-free and will benefit from surfacing that is undisturbed by agricultural activity.

13. Conclusions:

- 13.1. Officers are of the opinion that the proposed diversion of Sopley Footpath No.30 from A-B to A-C 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 point of the proposed route is on a highway connected to the original termination point.
 - 13.1.2. The proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of accessibility, surface and character, providing a grass surface that will remain undisturbed by agricultural activity and will run alongside a small brook.
 - 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.
- 13.2. Officers are also of the opinion that the proposed dedication of a public footpath between Points D and E under s25 of the Highways Act would create a useful link in the rights of way network in this area providing an off-road link between Sopley Footpath No.17 and Sopley Bridleway No.32.

14. Recommendations:

- 14.1. That an Order is made diverting Sopley Footpath No.30 from A-B to A-C, as shown on the accompanying plan.
- 14.2. That the dedication of a public footpath following the route D to E be accepted, 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.)

<u>Document</u>	<u>Location</u>
General Correspondence	I:\Recreation and Heritage\Countryside Service\Rights of Way\Vicky Bowskill\Orders by Parish\Sopley FP30 - Div
Proposal File	VB\Div\Sopley FP30

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		