

**HAMPSHIRE COUNTY COUNCIL****Decision Report**

<b>Decision Maker:</b>	Regulatory Committee
<b>Date of Decision:</b>	24 November 2010
<b>Title:</b>	Application for a Public Path Diversion Order for part of Footpath No.27 and Dedication of a Public Bridleway in the Parish of Worldham
<b>Reference:</b>	2328
<b>Report From:</b>	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 Worldham Footpath No.27 and to dedicate a public bridleway along the new and an extended route to create a link between Worldham Byway Open to All Traffic No.39 and Worldham Bridleway No.30. The application has been made in the interests of the public to create more useful strategic links in the local path network for walkers, cyclists and equestrians.
- 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 public. 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.
- 1.4. It is further recommended that the offer to dedicate a public bridleway along the extended route be accepted, also in the interests of the public due to the strategic value of the proposed link. 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 Worldham Footpath No.27 and to dedicate a public bridleway along an extended route, as shown on the attached large scale plan.
- 3.2. It is proposed that the application for diversion of part of Worldham Footpath No.27 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 public 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 bridleway along the diverted route and extending in a westerly, then southerly direction to create a link between Worldham Byway Open to All Traffic No.39 and Worldham Bridleway No.30 be accepted.

**4. Applicant:**

- 4.1. Ahmadiyya Muslim Association UK  
181 London Road  
Morden  
SM4 5AE

**5. Landowners:**

- 5.1. Ahmadiyya Muslim Association UK  
181 London Road  
Morden  
SM4 5AE

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

6.1. Current Route

The section of Worldham Footpath No.27 affected by this proposal commences at Point A (SU 7623 3726) at a stile and proceeds in a generally northerly direction across fields to Point B (SU 7596 3800).

The length of Worldham Footpath No.27 between Points A and B is approximately 830 metres. There is no recorded width for this section.

6.2. Proposed Route of Footpath Diversion

The proposed route of the diverted section of Worldham Footpath No.27 commences at Point A (SU 7623 3726) and proceeds in a generally north-easterly direction along a field edge, over a bridge at Point D and through a field gate at Point C (SU 7676 3778) at a junction with Worldham Bridleway No.30.

The length of this proposed route between Points A and C is approximately 780 metres.

6.3 Proposed Route of Public Bridleway

The proposed route of the section of Worldham Footpath No.27 to be dedicated as bridleway commences at Point C (SU 7676 3778) with a gate at a junction with the U230 Rookery Farm Lane and Worldham Bridleway No.30, and proceeds in a generally south-westerly direction along a field edge with a firm and level grass surface, over a bridge at Point D and through a gate at Point F, turning south at Point H, over culverts at points I, J and K to end at a junction with Worldham Byway Open to All Traffic No.39 at Point L (SU 7583 3680).

The length of this route is approximately 1570 metres and will have a width of 3 metres throughout with a constructed surface. It is not planned for this route to be enclosed between fences at this stage.

**7. Background to the Application:**

- 7.1. The fields crossed by both the existing and proposed routes were purchased by the Ahmadiyya Muslim Association UK (AMAUK) for the purpose of providing a location for the annual Jalsa Salana festival, with the land being farmed for the rest of the year. The current route of Worldham Footpath No.27 passes directly through the area used for the festival and this has caused concern both for the operators of the festival and users of the path in recent years. As a result of this the possibility of a permanent diversion has been investigated.
- 7.2. The current route of Worldham Footpath No.27 exits at its northern end onto the B3004 Worldham Hill which is a very busy and fast stretch of road with little or no verge to give refuge for walkers wishing to use this route to connect with other public rights of way leading off it. As such Worldham Footpath No.27 is effectively a dead-end for most path users who would find the B3004 too dangerous to follow on foot.

- 7.3. The proposed bridleway route has been identified as one that would create valuable links for walkers, cyclists and equestrians to public rights of way to the east and west of the existing route. This creates opportunities to follow a variety of circular routes linking into the villages of East Worldham and Oakhanger, and the Hangers Way long distance walking route. There is no recorded width for the existing definitive route of footpath 27; a width of 3 metres would be recorded for the proposed bridleway, allowing this path to be more effectively protected in the future.
- 7.4. The proposed bridleway adds 740 metres to the rights of way network, with 1570 metres of bridleway replacing 830 metres of footpath, and improves network connectivity. The proposed route offers similar views and improved surfacing compared to the existing route and will remain unaffected by the activity of the annual festival, providing an uninterrupted and well connected network in this area. The works required to bring the proposed route up to an acceptable standard, and the cost of the diversion process itself, will be met in full by AMAUK.
- 7.5. It is not possible to both divert the footpath and dedicate it as a public bridleway in the same legal Order. To achieve this it is proposed that a deed of dedication be signed for the public bridleway which would come into effect upon the successful diversion of Worldham Footpath No.27 from A-B to A-C.
- 7.6. Due to the significant amount of public benefit that is offered by the proposed route this application has been made in the interests of the public, rather than the landowner.

## **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 views and general character. The route of the proposed public bridleway will benefit from improved surfacing to make it suitable as a shared route between cyclists, equestrians and pedestrians. Two existing stiles leading off the route will be replaced by kissing gates and there will be three other equestrian gates on the route itself, making the proposed route easier to use for less-able path users.

## **9. Costs:**

- 9.1. The cost of advertising the Diversion Order and dedication, 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 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 Kemp-Gee  
Councillor Kemp-Gee has been consulted and fully supports this proposal.
- 10.2. East Hampshire District Council  
East Hampshire District Council has been consulted on this proposal and has no objection to it. Comments made by a district councillor support the dedication of the diverted route as public bridleway.
- 10.3. Worldham Parish Council  
Worldham 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 and support this proposal from a road safety standpoint.
- 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 Worldham 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 but have made no comment.
- 10.9. The Open Spaces Society  
The Open Spaces Society has been consulted on this proposal and support the proposal to dedicate the diverted route as public bridleway.
- 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.

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 responses received to this consultation exercise, all are either in support, or have no objection to it.

11.2. Prior to the formal consultation detailed above, extensive consultations were carried out with local residents, Worldham Parish Council, County and District Councillors and representatives of AMA UK. The original proposal for a straightforward diversion of footpath status was rejected as part of this process and the current proposal, which includes an upgrade to bridleway status, has received support from those involved.

**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 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 one termination at Point A remains the same. The new terminations at Points C and L can be considered to be more convenient than the existing termination at Point B, as they connect with the ongoing rights of way network. With the proposed diversion and associated dedication of public bridleway any individual wishing to travel west from Point B now has the option of using A-G and then travelling north along Worldham Footpath No.18. This, as an off road route, is considered safer and more attractive than walking along the road.

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 Worldham Footpath No.27 in that it will be stile-free and will benefit from improved surfacing.

### **13. Countryside Access Plan**

- 13.1. The dedication of a public bridleway along the proposed route C-L, following the successful diversion of Worldham Footpath No.27 from A-B to A-C, satisfies the following objectives contained in the Countryside Access Plan for the South Downs (Hampshire) area by creating a valuable strategic link for walkers, cyclists and equestrians.
  3. There is a limited supply of easily accessible, inviting routes in the area.
  5. Countryside access users are forced to use or cross busy roads to link up off-road access.
  6. There is a need for more circular routes for all users.

### **14. Conclusions:**

- 14.1. Officers are of the opinion that the proposed diversion 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:
  - 14.1.1. The proposed route provides a more direct link to the ongoing rights of way network and the new termination point is on a highway connected to the original termination point.
  - 14.1.2. The proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of accessibility and safety with similar views and character.
  - 14.1.3. It is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

- 14.2. Officers are also of the opinion that the proposed dedication of a public bridleway along the route C-L under s25 of the Highways Act would create a valuable strategic link in the rights of way network in this area that will be unaffected by the annual festival activity, securing uninterrupted access in this area at all times for walkers, cyclists and equestrians.

**15. Recommendations:**

- 15.1. That an Order is made diverting Worldham Footpath No.27 from A-B to A-C, as shown on the accompanying plan.
- 15.2. That the dedication of a public bridleway following the route C to L be accepted, subject to the successful diversion in 14.1, 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\Worldham FP27 - Div
Proposal File	VB\Div\Worldham FP27

### 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		