

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date of Decision:	22 March 2017
Title:	Application for a Public Path Diversion Order for East Tytherley Footpath No.12
Reference:	8191
Report From:	Director of Culture, Communities and Business Services

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1. Executive Summary:

- 1.1. The purpose of this paper is to consider an application to divert East Tytherley Footpath No.12. The landowner has applied for this diversion for privacy and safety purposes; the existing route currently runs through their dwelling and shares the access road.
- 1.2. Officers consider that it is expedient to divert this footpath in the interests of the landowner. The proposed alignment of the diversion is not considered to be substantially less convenient to the public than the existing route. 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, bridleways and restricted byways may be made under Section 119 of the Highways Act 1980, in the following circumstances:-

“(1) Where it appears to a council as respects a footpath, bridleway or restricted byway 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, bridleway or restricted byway 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. Applicant and Landowner:

- 3.1. Mr and Mrs Asher
Oaklands Farm
East Tytherley
SP5 1LJ

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

4.1. Current Route of Footpath

The section of East Tytherely Footpath No.12 affected by this proposal commences at Point A (SU 2989 2890) and proceeds in a northerly direction for approximately 134m (145yd), along the boundary of their home before continuing in a north easterly direction for approximately 488m (534yd) to Point B (SU 2999 2943). The current route is on a metalled surface, as it is the shared drive and access to the property. There are 2 kissing gates, 5 very step concrete steps and a style. The landowner has planning permission to convert the barn, shown on the map south of point B, to a dwelling. This means an increase of traffic on this route. The total length of this route is approximately 622m (679yd).

4.2 Proposed Route of Diversion

The section of East Tytherely Footpath No.12 affected by this proposal commences at Point A (SU 2989 2890) and proceeds in a north westerly direction for approximately 134m (146yd) before continuing in a north easterly direction for approximately 488m (534yd) to Point C (SU 2996 2943). There will be stock proof fencing on wooden posts on each side of the new route, with kissing gates at the end (one at point A the other at C). There is no need for styles and steps on this route, whilst the surface will not be metalled, the surface is well drained, level with minimal/no maintenance expected. It is traffic free, around a field edge, an improved experience for the user. Many users prefer not to be walking through the direct vicinity of private dwellings or sharing the route with traffic. The total length of the proposed route is 622m (679yd), the same distance as current route.

5. Background to the Application:

- 5.1. The landowner has applied for this diversion to take the path away from the shared access and away from their property boundary, for privacy and safety reasons.

- 5.2. The users will not be sharing the path with vehicles and not walking in the direct vicinity of the land owner's property. The diversion route will be 2.5m (8.2ft) wide and will follow the edge of the field.

6. Compliance with the County Councils Diversions Criteria:

- 6.1. The Countryside Access Team of Hampshire County Council has published Guidance Notes for landowners who are considering an application for diversion 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.

7. Costs:

- 7.1. The cost of advertising the Diversion Order, 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.
- 7.2. 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.
- 7.3. 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 further 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.

8. Consultations with Other Bodies:

8.1. Local Member – Councillor A Gibson

Councillor Gibson is aware of this proposal.

8.2. Test Valley Borough Council

Test Valley Borough Council has reviewed details of the proposal and has no comments to make.

8.3. Area Countryside Access Manager

The Area Countryside Access Manager has been consulted on this proposal and has visited the site. He is in support of this diversion and has no concerns regarding the surface, he has confirmed that the ground is level, well drained and expects minimal or no maintenance on behalf of the Council. The benefits of no traffic, the removal of steps and styles out weighs the change of the surface.

8.4. The Ramblers

The Ramblers support this proposal.

8.5. The Open Spaces Society

The Open Spaces Society is in favour of this proposal and also commented on the good surface of the new route.

9. Comments on Consultation Replies:

9.1. Of all of the respondents to this proposal, all have been supportive.

10. Criteria for Assessment of the Proposal:

10.1. 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 it is in the interests of either the landowner or of the public.

10.2. Section 119(2) of the Highways Act 1980 requires that a Diversion Order should not be made unless the new termination point connects to the same highway, or a highway connected to it and is substantially as convenient to the public as the existing termination point. In this proposal the termination point of the proposed route is 31 metres (33 yds) to the west of the original point.

10.3. 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:

10.3.1. the diversion would have on public enjoyment of the path or way as a whole;

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

10.3.3. 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.

10.4. 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 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 to those users, as the current route has 5 very shallow, steep concrete steps and a stile. The proposed route replaces the stile for a gate and there is no requirement for steps.

11. Conclusions:

- 11.1. Officers are of the opinion that the proposed diversion of East Tytherley Footpath 12 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;
 - 11.1.1. the alternation of the termination points are minimal.
 - 11.1.2. the proposed route will not be substantially less convenient than the existing route and offers an improvement in terms of accessibility, structures and general character.
 - 11.1.3. it is unlikely that there will be any material increase in the cost to the County Council of maintaining the route at public expense.

12. Recommendations:

- 12.1. It is recommended that an Order is made under section 119 of the Highways Act 1980 to divert East Tytherley Footpath No.12 as shown on the accompanying plan.

CORPORATE AND LEGAL INFORMATION ABOUT THIS DECISION:**Links to the Corporate Strategy**

Hampshire safer and more secure for all:	No
Maximising well-being:	No
Enhancing our quality of place:	No

The proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the proposal is an application for a public path diversion order and requires determination by the County Council in its statutory role as the highway authority.

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	Countryside Offices, Castle Avenue, Winchester

IMPACT ASSESSMENTS:

1. Equality Duty

1.1. The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- a) The need to remove or minimise disadvantages suffered by persons sharing a relevant characteristic connected to that characteristic;
- b) Take steps to meet the needs of persons sharing a relevant protected characteristic different from the needs of persons who do not share it;
- c) Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity which participation by such persons is disproportionately low.

1.2. Equalities Impact Assessment:

In determining this application, the County Council is exercising its functions as the highway authority and as such must give due consideration to the statutory tests set out in s119 Highways Act 1980. These statutory tests have to be considered in conjunction with the overarching duty of s149 Equalities Act. There are steps, stiles and traffic on the current route, there will be no steps, styles or traffic on the proposed route. On balance, the new route is more convenient to the existing route.

2. Impact on Crime and Disorder:

2.1. It is unlikely that this proposal will have any impact on reported crime in this area.

3. Climate Change:

a) **How does what is being proposed impact on our carbon footprint / energy consumption?**

No impact identified.

b) Environmental: The proposed change will improve public enjoyment of the route by removing it from the direct vicinity of the owner's dwelling and the exclusion of traffic.