

**HAMPSHIRE COUNTY COUNCIL**  
**Officer Decision Record**

<b>Decision Maker:</b>	Jonathan Woods
<b>Title:</b>	Application for a Public Path Diversion Order for part of Footpath 7 in the Parish of Houghton

**Tel:** 0370 779 0112

**Email:** tara.pothecary@hants.gov.uk

**1. The decision:**

1.1 That the Countryside Strategic Manager gives the authority for an Order to be made under Section 119 of the Highways Act 1980, to divert part of Houghton Footpath 7.

1.2 The proposed diversion route is a 3 metre grass path.

1.3 A plan of the proposed route is attached.

**2. Reason(s) for the decision:**

2.1 The application has been made in the interests of the landowner to improve their security and privacy.

**Legal Framework:**

Orders for the Diversion of footpaths, bridleways or restricted byways may be made under Section 119 of the Highways Act 1980, as amended by the Wildlife and Countryside Act 1981, in the following circumstances: -

**Section 119(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, 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... 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'."

### **Section 119(2)**

A public path diversion order shall not alter a point of termination of the path or way—

- (a) if that point is not on a highway, or
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public".

### **Section 119(6)**

The Secretary of State shall not confirm a public path diversion order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that the diversion to be effected by it is expedient as mentioned in subsection (1) above, and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which—

- (a) the diversion would have on public enjoyment of the path or way as a whole,
- (b) the coming into operation of the order would have as respects other land served by the existing public right of way, and
- (c) 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...

## **3. Background**

3.1 The current alignment of that part of Houghton Footpath 7 proposed for diversion commences adjacent to a cattle grid and proceeds northwards through a pedestrian gate, along a tarmac track which also provides vehicular access for two properties, Cloverfield and Houghton Down House. The path proceeds past these properties in close proximity to the private dwellings and their gardens. It continues up a surfaced hill to a gate on the junction with the A30.

3.2 The application has been made in the interest of the landowner to improve their privacy and security, following a serious crime incident at Houghton Down House. There was a break in where the housekeeper was threatened during a burglary. The

family were not in at the time, the police attended the incident, and it has left the family, with young children, very nervous in their own home. The proposed diversion route climbs approximately 25 metres over the course of a 300-metre path that runs north-eastward along the edge of a field, out of the valley through which the definitive line runs. The path levels off and continues in a north-westerly direction to a junction with Houghton BOAT 13.

3.3 Prior to the submission of the application, members of the Hampshire Countryside Access Forum identified evidence that indicated the existence of higher rights on the definitive line of Footpath 7. Following discussions between the parties, it was agreed that if the diversion of Footpath 7 is successful, the applicant and the adjacent landowner to the south will dedicate restricted byway rights over the whole route (including both the diverted section and the connecting part of the route running south to North Houghton Lane). The owner has confirmed this in writing to HCC and has obtained an undertaking from the adjacent landowner to do the same.

3.4 It is considered that the diversion of the path would be in the interests of the landowner as is required by Section 119(1) – the path runs very close to the house, with the upshot being that it is relatively easy to see into the dwelling with a resulting impact upon the privacy of the owner. In terms of the tests set out in Section 119(6) (which are not a consideration at order-making stage but would be relevant at confirmation stage), although the proposed route is more challenging on account of the increased gradient, officers consider that it is not *substantially* less convenient to the user. But in any event, offsetting this is the fact that the proposed route is arguably more enjoyable, providing exceptional panoramic views of the surrounding landscape from a high vantage point when compared with the current path, which provides limited views as it runs through the foot of a valley and close to private dwellings and gardens to both sides, which some users might find intrusive. The definitive line is shared with vehicles accessing both properties and terminates at a junction with the A30, which is a busy, high-speed road which presents a challenge to users wishing to continue their journey beyond Footpath 7 (by comparison, the proposed diversion route would terminate at a junction with a BOAT, providing a quieter, safer and arguably more pleasant option for users which, although resulting in a longer journey between A\_B, would actually bring the user closer to the majority of the other off-road rights of way in the locality).

3.5 It is considered that the test set out in Section 119(1) has been met – the Order would be in the interests of the landowner. It is therefore considered that the Order should be made so the tests set out in Section 119(6), which are considered to be finely balanced in this case, can be considered at confirmation stage (if necessary, by an Inspector appointed by the Secretary of State).

#### **4. Consultation responses**

4.1 There have been two objections to the proposal. The first is from the Open Spaces Society who state that, in their opinion, the definitive path follows the valley quite naturally, and that any diversion that involved climbing the hills on either side would be unnatural or contrived. They state that the 100-foot climb is significant and is therefore substantially less convenient than the current route. They also cite the increase in length of the proposed path between A-B when compared with the definitive line.

4.2 The second objection comes from the Ramblers, who in their consultation response say that they can see little benefit to Ramblers, or walkers in general, that would result from the proposal. They feel that the scenic views from the higher ground, provided by the proposed route, would not outweigh its steeper gradient and the potentially poor surface in wet or wintry conditions, especially if upgraded to a restricted byway. The proposed route would require greater maintenance to keep it in a satisfactory condition. They felt the immediate access onto BOAT 13 from the proposed route is good but the access to the BOAT from the existing route is not an issue for walkers.

**5. Other options considered and rejected:** Not applicable.

**6. Conflicts of interest:** Not applicable

**7. Dispensation granted by the Head of Paid Service:** Not applicable.

**8. Supporting information:** None

**Approved by: Jonathan Woods Strategic Manager  
Countryside**

**Date: 02 March 2023**

-----

**On behalf of the Universal Services**

**Consultations with Other Bodies:**

Test Valley District Council

Test Valley District Council were consulted on this proposal but made no comment.

Local Member – Councillor Drew

Councillor Drew was consulted on this proposal and made no comment.

Houghton Parish Council

Houghton Parish Council were consulted on this proposal and although did not respond directly, the applicant had a meeting with them and confirmed that they were supportive.

The Ramblers

The Ramblers were consulted on this proposal and have objected on the grounds that they see no benefit to walkers, they feel the scenic views from the proposed route do not outweigh its steeper gradient and the potentially poor surface in wet or wintry conditions.

The Open Spaces Society

The Open Spaces Society were consulted on this proposal and have confirmed that should an order be made, they will strongly object, they feel the climb to be substantially less convenient and that the application is invariably in favour of the landowner.

**Appendix B**

**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.
- 1) 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 must be considered in conjunction with the overarching duty of s149 Equalities Act. The proposed route is in the interest of the applicant. The County Council consider the proposed route not to be substantially less convenient, some may prefer the views, connecting route and the feeling of intrusion the current route may have for some users.

## **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:

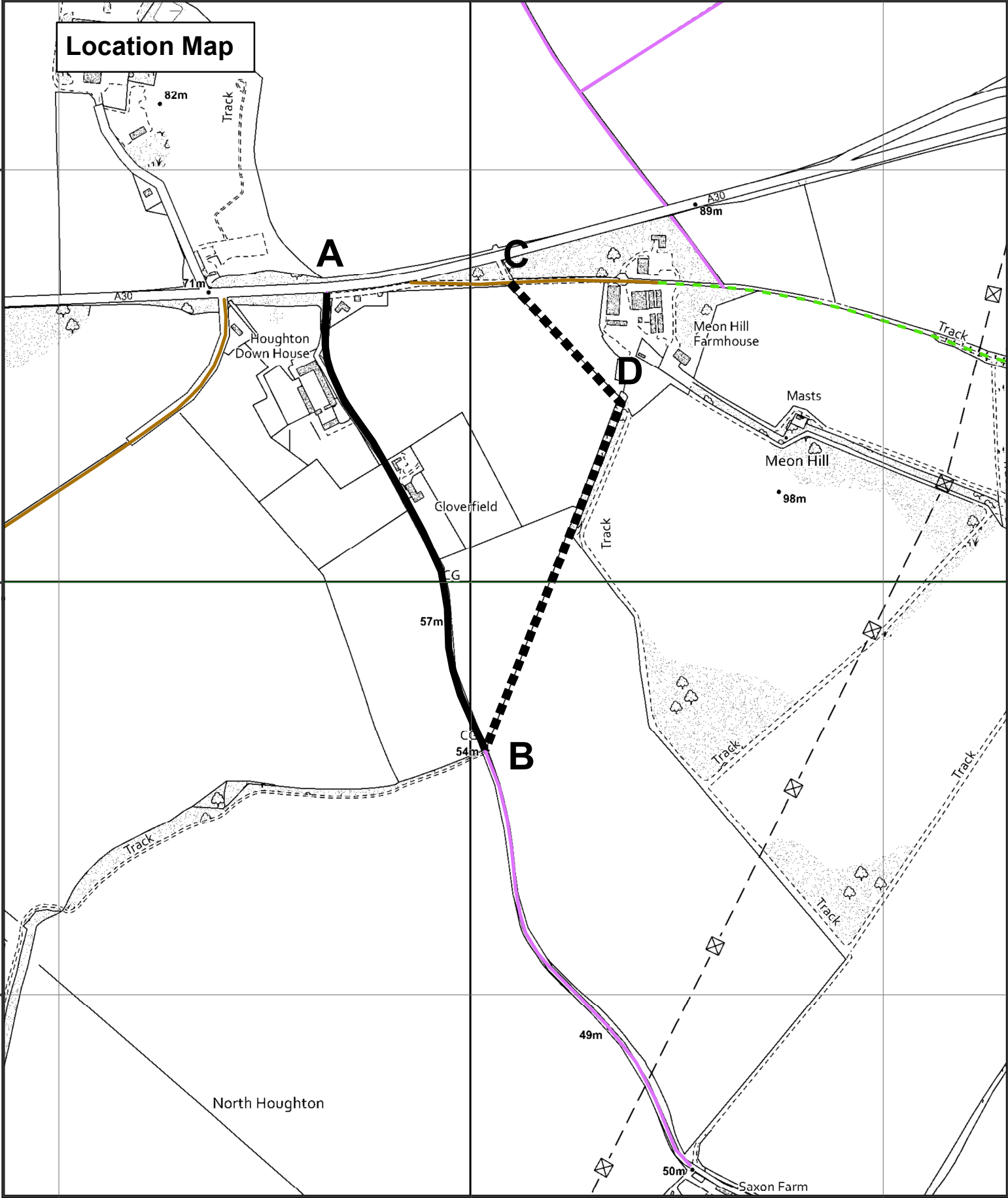
No impact identified.

433500

434000

434500

# Location Map



## Application for a Public Path Diversion Order for part of Houghton Footpath 7

LEGEND		1:6,000
	BOAT	
	Restricted Byway	
	Footpath	
	Footpath to be Extinguished	
	Footpath to be Added	

Countryside Access Team  
Three Minsters House  
Winchester, SO23 8UL

© Crown copyright and database rights 2022 Ordnance Survey 100019180.  
Use of this data is subject to terms and conditions. You are granted a non-exclusive, royalty free, revocable licence solely to view the Licensed Data for non-commercial purposes for the period during which HCC makes it available. You are not permitted to copy, sub-license, distribute, sell or otherwise make available the Licensed Data to third parties in any form. Third party rights to enforce the terms of this licence shall be reserved to Ordnance Survey