

**HAMPSHIRE COUNTY COUNCIL  
Officer Decision Record**

<b>Decision Maker:</b>	Jonathan Woods Countryside Strategic Manager
<b>Title:</b>	Application for a Public Path Diversion Order for part of Binsted Footpath 10e

**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 Highways Act 1980, to divert part of Binsted Footpath 10e.

1.2 The proposed diversion route is a 1 metre wide path.

1.3 A plan of the proposed route is attached.

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

2.1 The application has been made by the landowner to divert part of Binsted Footpath 10e to improve their privacy and security.

2.2 Guidance published by the Department for Environment, Food & Rural Affairs (DEFRA) in August 2023, provides a steer for local authorities as to the weight they should attach to the impact of public footpaths, bridleways or restricted byways where they run by private houses and gardens, farmyards and commercial and industrial premises. The guidance sets out Government policy on changes to public rights of way in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.

**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: -

“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’.”

### 3. Background

3.1 The definitive line of Binsted Footpath 10e commences at a junction with The Straits (U road) and proceeds south-westward along a private drive and through the garden of the property known as Hillside, continuing along a field edge.

3.2 The applicant recently erected a fence along their boundary edge to enclose and secure their garden as they have two rescue dogs. They informally redirected the footpath to the edge of the field adjacent to their property, and a member of the public reported this issue to the County Council.

3.3 The diversion is very minor and is considered to be in the interest of the landowner. The proposed alternative route is not considered to be “substantially less convenient” than the current definitive line; it has the same surface and direction, and is only 16 metres longer than the definitive line. Users of the path are likely to find the proposed route more enjoyable, as it would take away that feeling of intrusion that can arise from walking through private premises.

3.4 The applicant would also feel happier knowing that their dogs are fenced in their garden, where they will be segregated from walkers (some of whom may be walking with dogs) using the public right of way. Therefore, they have applied to make the diversion official rather than reinstate the original definitive line of the path.

- 4. **Other options considered and rejected:** Not applicable.
- 5. **Conflicts of interest:** Not applicable.
- 6. **Supporting information:** None

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

**Date: 25 July 2024**

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**On behalf of the Director of Universal Services**

## Appendix A

### **Consultations with Other Bodies:**

#### East Hants District Council

East Hants District Council have been consulted on this proposal but made no comment.

#### Local Member – Councillor Mark Kemp-Gee

Councillor Kemp-Gee has been consulted on this proposal, he felt that the proposed route seems a common sense deviation proposal and cannot see any harm in it. He confirmed that failing any major substantive objection from Binsted Paish Council he was OK with it.

#### Binsted Parish Council

Binsted Parish Council have been consulted on this proposal but made no comment.

#### The Ramblers

The Ramblers have been consulted on this proposal, they support the proposed minor path line change to allow the owners garden to be separated from the new path line and added that “this is good, since walkers and or their dogs might not interact well with the owners’ rescue dogs if they were to meet”. They also added that the path needs to be sufficient to allow for a fence or hedge growth in summer.

#### The Open Spaces Society

The Open Spaces Society were consulted on this proposal and confirmed they have no objection.

#### South Downs National Park Authority

South Downs National Park Authority have been consulted on this proposal but made no comment.

#### Area Countryside Access Manager

The Area Countryside Access Manager is supportive of this proposal.

## 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 have to be considered in conjunction with the over-arching duty of s149 Equalities Act. This diversion could not be considered to be substantially less convenient to the public, the proposed route is 16 metres longer in distance with the same surface and views.

### 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:

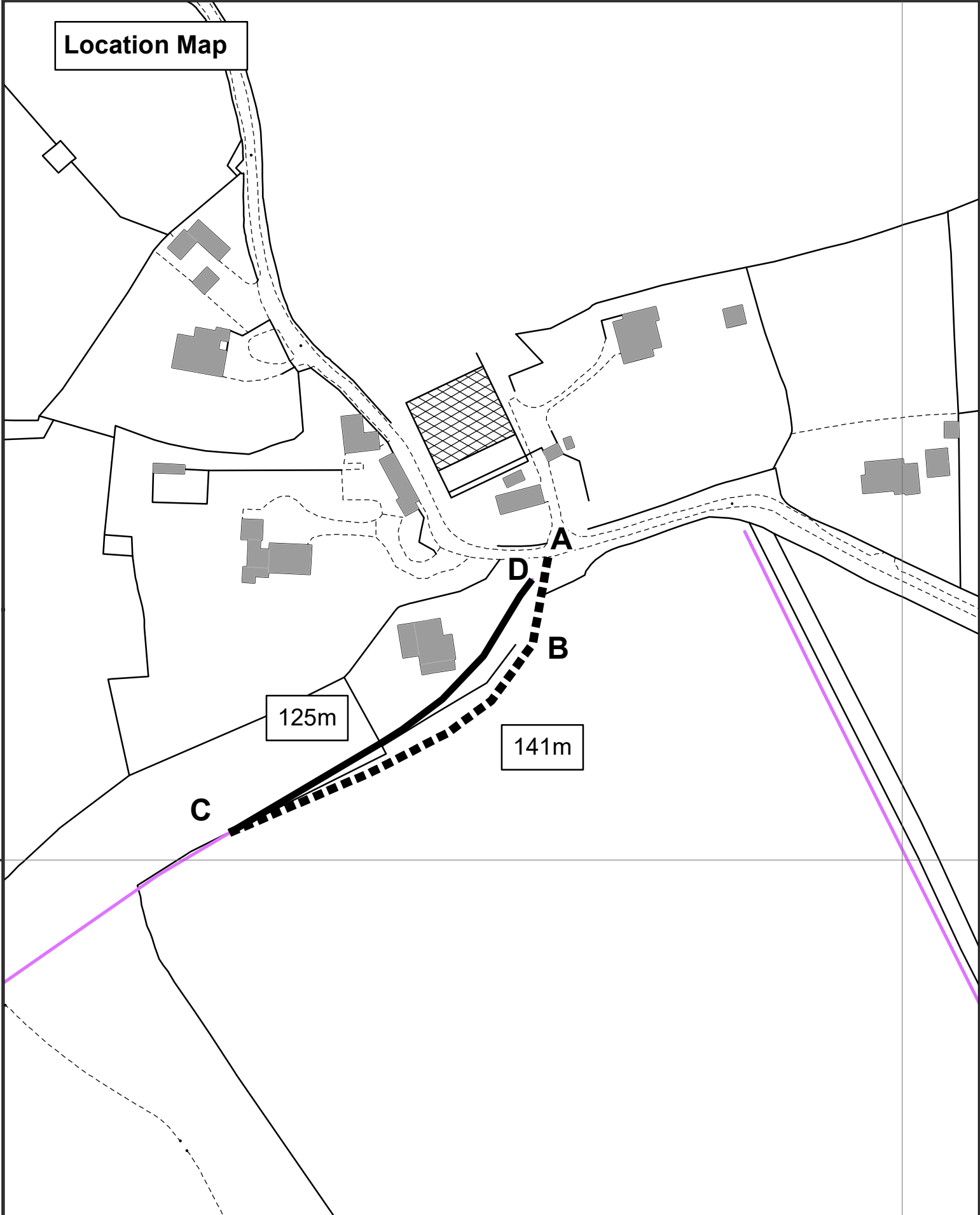
a) **How does what is being proposed impact on our carbon footprint / energy consumption?**

No impact identified.




b) Environmental:

No impact identified.

**Location Map**



**LEGEND 1:1,500**

-  **Footpath**
-  **Footpath to be Extinguished**
-  **Footpath to be added**

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