

HAMPSHIRE COUNTY COUNCIL

Officer Decision Record

Decision Maker:	Jonathan Woods – Countryside Strategic Manager
Date:	17 February 2025
Title:	Application for a Public Path Diversion Order - (Sparsholt Footpath No.1)
Reference:	PPO 5250
Contact name:	Tara Potheary – Countryside Access Development Officer
Email:	tara.potheary@hants.gov.uk

1. The decision:

That the application should be accepted and authority given for the making of a Public Path Diversion Order, the diversion route to have a width of 2.5 metres as shown between Points A and D on the attached plan, under the provisions of Section 119 of the Highways Act 1980.

The Order should include the following limitations: self-closing stock gates at SU 4290 3192, SU 4281 3225, SU 4281 3227, and SU 4243 3268. The proposed route runs through the college's agricultural land and therefore the path will have stock proof fencing one side and hedge row the other.

That the Order be confirmed as an unopposed Order if no objections or representations are received, on the basis that the Council is satisfied that the relevant legal tests are satisfied; or, if objections or representations to the Order are received, further consideration is given as to whether the Order be submitted to the Secretary of State for confirmation.

2. Reason(s) for the decision:

This is an application made by Sparsholt College (The Applicant) in November 2024 under Section 119 of the Highways Act 1980, to divert a footpath in Sparsholt. The application has been made on the basis that the college would like to secure the campus and provide better safeguarding of their pupils by diverting the public around the campus will enable them to manage this. They commented that the public may also prefer to walk through the fields, with landscape views and open fields as opposed to walking through the college grounds with students and staff all moving about.

Having considered the application and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds to make an Order to divert part of Sparsholt Footpath No. 1.

3. Other options considered and rejected:

The proposed fencing was discussed, and the effect this might have on the need for the proposed kissing gates. Following discussions with the applicant it was agreed to install self-closing stock gates at the start and end of the route and where the path crosses Garstons Track on each side of the lane (as described above).

4. Conflicts of interest:

None

5. Dispensation granted by the Head of Paid Service:

N/A

6. Supporting information:

- Officer Report
- Location plan

Approved by:

Date: 17 February 2025

Jonathan Woods – Countryside Strategic Manager

On behalf of the Director of Universal Services

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

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.)

Document

Location

Application Reference: PPO 5250
Parish of Sparsholt

*Countryside Access Team
Universal Services
The Castle
Winchester
Hampshire
SO23 8UD*

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

2. Impact on Crime and Disorder: N/A

3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

Hampshire County Council declared a climate change emergency on 17 June 2019 and a Climate Change Strategy and Action Plan has since been adopted. The County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

The legislative framework for Public Path Orders does not enable the decision maker to take into account any environmental concerns relating to an application and a climate change impact assessment has therefore not been carried out in relation to this application. The Countryside Access Team strives to reduce their environmental impact wherever possible.

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Jonathan Woods <i>Countryside Strategic Manager</i>
Date:	17 February 2025
Title:	Application for a Public Path Diversion Order - (Sparsholt Footpath No.1)
Reference	PPO 5250

Contact name: Tara Potheary - Countryside Access Development Officer

Email: tara.potheary@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to assist the Countryside Strategic Manager in determining whether to accept an application to divert part of Sparsholt Footpath No.1.

Recommendation(s)

2. That the application should be accepted and authority given for the making of a Public Path Diversion Order, the diversion route to have a width of 2.5 metres as shown between Points A and D on the attached plan, under the provisions of Section 119 of the Highways Act 1980.
3. The Order should include the following limitations: self-closing stock gates at SU 4290 3192, SU 4281 3225, SU 4281 3227, and SU 4243 3268. The proposed route runs through the colleges agricultural land and therefore the path will have stock proof fencing one side and hedge row the other.
4. That the Order be confirmed as an unopposed Order if no objections or representations are received, on the basis that the Council is satisfied that the relevant legal tests are satisfied; or, if objections or representations to the Order are received, further consideration is given as to whether the Order be submitted to the Secretary of State for confirmation.

Executive Summary

5. This is an application made by Sparsholt College ('The Applicant') in November 2024 under Section 119 of the Highways Act 1980, to divert a footpath in Sparsholt. The application has been made on the basis that the college would like to secure the campus and provide better safeguarding of their pupils by diverting the public around the campus will enable them to manage this. They commented that the public may also prefer to walk through the fields, with landscape views and open fields as opposed to walking through the college grounds with students and staff all moving about.

6. Having considered the application and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds to make an Order to divert part of Sparsholt Footpath No. 1.

Legal framework for the decision

HIGHWAYS ACT 1980 - Section 119: Diversion of footpaths, bridleways and restricted byways (PART)

- (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 specified in the order or determined 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”.

- (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.
- (3) Where it appears to the council that work requires to be done to bring the new site of the footpath, bridleway or restricted byway into a fit condition for use by the public, the council shall—
 - (a) specify a date under subsection (1)(a) above, and
 - (b) provide that so much of the order as extinguishes (in accordance with subsection (1)(b) above) a public right of way is not to come into force until the local highway authority for the new path or way certify that the work has been carried out.
- (4) A right of way created by a public path diversion order may be either unconditional or (whether or not the right of way extinguished by the order was subject to limitations or conditions of any description) subject to such limitations or conditions as may be specified in the order.
- (5) Before determining to make a public path diversion order on the representations of an owner, lessee or occupier of land crossed by the path or way, the council may require him] to enter into an agreement with them to defray, or to make such contribution as may be specified in the agreement towards,—
 - (a) any compensation which may become payable under section 28...as applied by section 121(2)..., or

(b) where the council are the highway authority for the path or way in question, any expenses which they may incur in bringing the new site of the path or way into fit condition for use for the public...

(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,

so, however, that for the purposes of paragraphs (b) and (c) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation referred to in subsection (5)(a) above.

(6A) The considerations to which—

- (a) the Secretary of State is to have regard in determining whether or not to confirm a public path diversion order, and
- (b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would create or extinguish a public right of way.

HIGHWAYS ACT 1980

Section 28: Compensation for loss caused by public path creation order (PART – applied by Section 121)

(1) Subject to the following provisions of this section, if, on a claim made in accordance with this section, it is shown that the value of an interest of a person in land is depreciated, or that a person has suffered damage by being disturbed in his enjoyment of land, in consequence of the coming into operation of a public path creation order, the authority by whom the order was made shall pay to that person compensation equal to the amount of the depreciation or damage.

Section 29: Duty to have regard to agriculture, forestry and nature conservation (applied by Section 121)

(1) In the exercise of their functions under this Part of this Act relating to the making of public path creation agreements and public path creation orders it shall be the duty of councils to have due regard to -

- (a) the needs of agriculture and forestry, and
- (b) the desirability of conserving flora, fauna and geological and physiographical features.

(2) In this section, “agriculture” includes the breeding or keeping of horses.

Section 120: Exercise of powers of making public path extinguishment and diversion orders

- (2) The powers of making orders under sections 118 to 119D above are not exercisable by a council -
- (a) with respect to any part of a highway which is within their area, without prior consultation with any other council in whose area that part of the highway is situated;
 - (b) with respect to any part of a highway which is outside their area, without the consent of every council in whose area it is; and
 - (c) with respect to any part of a highway in a National Park, without prior consultation with Natural England (if the National Park is in England)...

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949

5 National Parks

- (1) The provisions of this Part of this Act shall have effect for the purpose-
- (a) of conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas specified in the next following subsection; and
 - (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public.

11A Duty of certain bodies and persons in relation to the purposes for which National Parks are designated

- (2) In exercising or performing any functions in relation to, or so as to affect, land in any National Park in England, a relevant authority other than a devolved Welsh authority must seek to further the purposes specified in section 5(1) and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.

RELEVANT CASE LAW

Hargrave & Anor v Stroud District Council (2001)

The court held that the test under Section 119(1), concerning the expediency of making an order in the interests of the landowner or the public, was a low threshold.

Young v Secretary of State for the Environment, Food and Rural Affairs & Anor (2002)

The judgment in *Young* confirmed that, in deciding whether to confirm an order under section 119, matter relating to convenience were distinct from enjoyment, and where the proposed diversion was considered expedient and not substantially less convenient, but would not be as enjoyable to the public, the Inspector must balance the interests of the applicant and the criteria set out in section 119(6) to determine whether it would be expedient to confirm the Order.

Ramblers Association v Secretary of State for Environment, Food and Rural Affairs, Weston and others (2012)

It was held that Section 119(6) contains three separate tests:

Test 1: whether the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public.

Test 2: whether the proposed diversion is 'substantially less convenient to the public' in consequence of the diversion).

Test 3: whether it is expedient to confirm the Order having regard to the effect :

- (a) of the diversion on the public enjoyment of the path or way as a whole;
- (b) of the Order on other land served by the existing public right of way; and
- (c) of any new public right of way on the land over which it is to be created and any land held with it.

Any material provisions of a rights of way improvement plan must also be taken into account.

Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs (2021)

It was argued by the OSS (the appellant) that at confirmation stage, the Inspector could only have regard to the specific matters referred to in section 119(6) of the 1980 Act, and could not balance those considerations against the interests of the landowner. However, the Court of Appeal confirmed that when considering a public path diversion order, an Inspector was legally permitted to consider factors beyond those specified in section 119(6), such as privacy and/or security.

Description of the existing and proposed diversion route(s)

7. The current alignment of Sparsholt Footpath 1 commences on Hillside Road at a junction with Westley Lane, Point E (SU 4290 3191) on the plan included with this report. The path then proceeds westwards and north-westwards along Hillside Road and through the college campus to Point F (SU 4251 3200), then continues northwards continuing through the campus along Hillside Road to Point D (SU 4242 3269). The overall distance of that part of the path is 1132 metres.
8. The proposed diversion route is a 2 metre wide path commencing at a junction with Hillside Road, Point A on the plan (SU 4290 1319), proceeding north-westwards along a field edge, crossing an access track to Point B (SU 4281 3227), proceeding westwards along a field edge to Point C (SU 4281 3227) then northwards along a field edge to Point D (4242 3269). The proposed route will include the following limitations: kissing gates at SU 4290 3192, SU 4283 3210, SU 4281 3225, SU 4281 3227, SU 4251 3233 and SU 4242 3269. The proposed route runs through the College's agricultural land and therefore the path will have stock proof fencing on one side and a hedge row on the other. The overall distance for the proposed route is 1102 metres in length.
9. The proposed route is situated on the outskirts of the campus, ensuring segregation between members of the public and students, staff and visitors of the college. The proposed route offers views over the countryside and is 30 metres shorter in distance.

Issues to be decided

10. Before making an order under Section 119, the County Council must be satisfied that two preliminary tests are met. Firstly, the Order must be 'expedient' in the interests of either the public or the landowner (the courts have held that this is a low threshold).
11. Secondly, the termination point of the proposed diversion must either terminate at a point on the same highway, or a highway connected with it, and the resulting diversion must be substantially as convenient to the public. The termination point

of a highway which does not terminate on highway may not be altered under Section 119.

12. Assuming the first two tests are met, then prior to confirmation a third test must be considered, which involves a consideration of the matters set out in Section 119(6)(a) – (c) and then a weighing of the outcome of that consideration against the outcome of the first two tests in order to reach an overall conclusion as to expediency. The expediency test is not confined to these factors, as confirmed by the Court of Appeal in *Open Spaces Society v DEFRA (2021)*, and the County Council must “...have regard to the effect of the matters specified in paragraphs (a) to (c) (and any material provision of a rights of way improvement plan) and may have regard to any other relevant matter, including if appropriate the interests of the owner or occupier of the land over which the path currently passes, or the wider public interest.” The term ‘expedient’ suggests a broad judgment is required, and it is up to the decision-maker to balance the various considerations.
13. A proposed diversion might be as convenient as the existing path, but less enjoyable to use, perhaps as a result of being less scenic. In such cases, the County Council must consider the benefit to the landowner or public against the loss of public enjoyment (along with other relevant factors) in order to determine the expediency of confirming the Order.
14. Where a proposed diversion offers enhanced public enjoyment but is significantly less convenient (perhaps on account of being less accessible or much longer) the Order should not be confirmed, as this would run contrary to the provisions of Section 119(6). The issue of convenience is distinct from the question of expediency (as per *Young*). It should be noted that the convenience tests cited in subsections (2) (‘substantially as convenient’) and (6) (not ‘substantially less convenient’) are different, in that the latter provides for a greater degree of inconvenience than the former.
15. In instances where the existing path is obstructed, it is the Planning Inspectorate’s view that when considering orders made under Section 119 the convenience of the existing route should be assessed as if it were unobstructed and maintained to a suitable standard for its users.
16. If an application is approved and an Order made, then the width of the diverted route, together with any limitations to use that are to be included must also be recorded. Authority for the inclusion of those particulars in the Order to change the definitive map and statement should also be given.
17. Where a Public Path Order is made, the statutory process allows for objections to be made in response to it. In these circumstances, the County Council cannot itself confirm the Order, which would need to be referred to the Secretary of State for determination. Alternatively, if upon a review of the objections it considers it can no longer support the Order, the County Council may decide not to pursue the matter further and rescind the Order.
18. Although the tests set out in Section 119(6) are only applied at confirmation stage, given that the County Council has discretion in whether or not to make an Order, it is to take them into account when deciding whether or not to make the Order.

Background to the Application

19. Sparsholt College submitted an application in November 2024 to enhance security and student safety measures. This aligns with their updated Safety and Security Policy, which was approved in October 2024. The policy includes new procedures for lockdowns, bomb threat management, and improved infrastructure to ensure the safety of students, staff, and visitors.
20. The definitive route of Footpath 1 proceeds westwards through the main access road through the college which is often busy with buses, students and vehicles. It then proceeds northwards along a farm track which is also a narrow, busy lane used by farm vehicles. The college considers that the proposal to divert the path around the outskirts of the college will enable them to improve safeguarding of their pupils and better manage the security of the site.
21. Users of the path may also benefit from the proposed route, as they might prefer walking through fields with countryside views, rather than sharing a path with students moving from to and from classes.

Consultations

22. The following people and organisations have been consulted on this application: Sparsholt Parish Council, Winchester City Council, The Ramblers and the Open Spaces Society. Additionally, the County Council Member for Winchester City, Councillor Jan Warwick, has been made aware of the application. Where responses were provided, these are set out below.

Name of consultee

23. The Ramblers confirmed that they walked the proposed diversion route with a member of Sparsholt College staff in December 2024 and confirmed that the Ramblers would have no objection to the application and would welcome the improved safety and outlook of the proposed route.
24. The Open Spaces Society also responded to confirm that they would have no objection to the application.

Consideration of the legal tests

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

25. It would be expedient in the interest of the college to divert part of Sparsholt Footpath 1 out of the campus. It would allow them to better manage the security on their premises, as well as the safeguarding of their students.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

26. The termination points of the proposed path would both be on the same highway.
The effect which the diversion would have on public enjoyment of the path or way as a whole
27. It is considered that the proposed route offers users a more scenic and peaceful experience when compared with the current path. The route is mainly off-road,

aside from crossing a quiet lane, and provides enhanced views of the countryside. In contrast, the existing path is much busier, shared with students, staff, and visitors and runs alongside an access road used by buses and vehicles transporting students. Additionally, the current path continues along a busy and narrow road frequented by farm vehicles and students.

The effect which the Order would have on land served by the existing right of way

28. The definitive route runs over land within the Applicant's ownership. Removing the right of way from the access road will allow the College to better manage access and security.

The effect which the Order would have on land over which the new right of way is created

29. The land served by the proposed route falls within the Applicant's ownership. No adverse impact resulting from the proposed change has been identified.

Whether the diversion route will be substantially less convenient to the public

30. The proposed route commences and terminates on the same highway, with a slightly shorter distance of 30 metres. It is not considered to be substantially less convenient to the public.

Rights of Way Improvement Plan

31. There are no provisions in the Countryside Access Plan that are relevant to this application.

Conclusions

32. It is considered that it would be expedient to make the order in the interests of both the landowner and the public. The diversion would enable the Applicant to better manage safety and security on the site and would remove interaction between members of the public and vehicles using the access road.
33. The proposed diversion route will not be substantially less convenient to the public, and it is considered that it will provide a more enjoyable overall experience for users of the path.
34. It is therefore recommended that the request Order be made, and confirmed as an unopposed Order if no objections or representations are received, on the basis that the Council is satisfied that the relevant legal tests are satisfied.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because: the County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.

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>
Application Reference: PPO 5250 Sparsholt Footpath 1	<i>Countryside Access Team Universal Services The Castle Winchester Hampshire SO23 8UD</i>

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

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 by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

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

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

2. Equalities Impact Assessment:

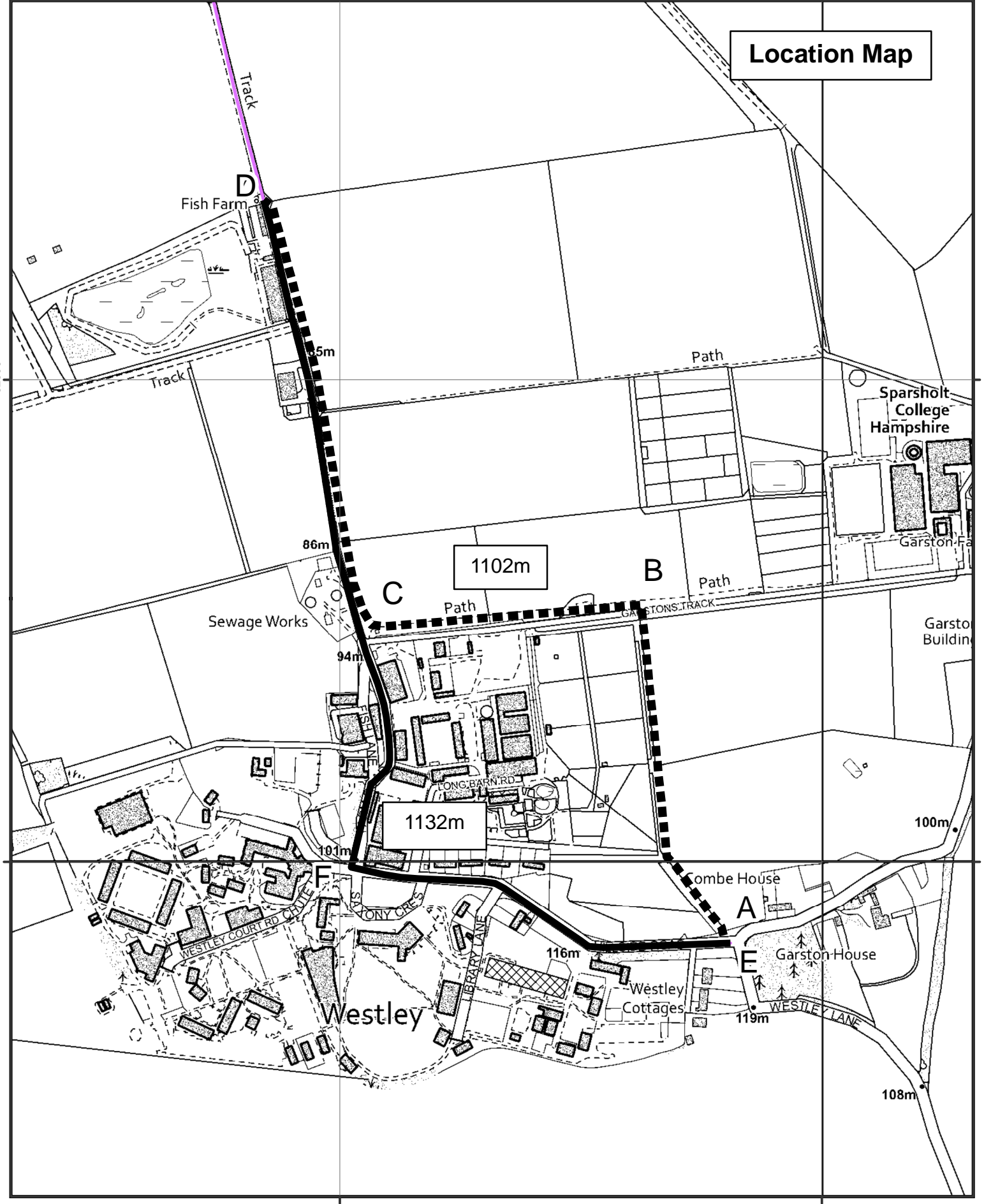
Hampshire County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981. It is not considered that there are any aspects of the County Council's duty under the Equality Act which will impact upon the determination of this Definitive Map Modification Order application.

3. Climate Change Impact Assessment:

Hampshire County Council declared a climate change emergency on 17 June 2019 and a Climate Change Strategy and Action Plan has since been adopted. The County Council utilises two decision-making tools to assess the carbon emissions and resilience impacts of its projects and decisions. These tools provide a clear, robust, and transparent way of assessing how projects, policies and initiatives contribute towards the County Council's climate change targets of being carbon neutral and resilient to the impacts of a 2°C temperature rise by 2050. This process ensures that climate change considerations are built into everything the Authority does.

The legislative framework for Definitive Map Modification Orders does not enable the decision maker to take into account any environmental concerns relating to an application and a climate change impact assessment has therefore not been carried out in relation to this application. The Countryside Access Team strives to reduce their environmental impact wherever possible.

Location Map



Application for a Public Path Diversion Order for part of Sparsholt Footpath 1

Countryside Access Team, Universal Services
The Castle, Winchester, SO23 8UL

LEGEND 1:5,000

- Footpath
- Footpath to be Extinguished
- ⋯** Footpath to be Added

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