

## HAMPSHIRE COUNTY COUNCIL

### Officer Decision Record

Decision Maker:	Jonathan Woods – Countryside Strategic Manager
<b>Date:</b>	31 March 2025
<b>Title:</b>	Application for a Public Path creation and extinguishment – Fareham Footpath 65
<b>Reference:</b>	PPO 5260
<b>Contact name:</b>	Tara Potheary – Countryside Access Development Officer
<b>Email:</b>	tara.potheary@hants.gov.uk

#### 1. The decision:

That the application should be accepted and authority given for the making of concurrent orders under Sections 26 and 118 of the Highways Act 1980 to create and extinguish public rights of way, as shown on the Location Map at Appendix 1. The route to be created will have a width of 3.5 metres as shown between Points A and D on the attached plan.

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 that it be submitted to the Secretary of State to enable the applicant to promote the Order, subject to any additional information that comes to light as a result of this process.

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

This is an application made by Fareham Borough Council ('The Applicant') in February 2025 to create a footpath in Fareham and extinguish part of Fareham Footpath 65. Both paths run through land owned by the FBC. The application has been made in the interests of both the landowner and the public on the basis that the path being created is the path that has been used by the public since the early 1980s.

Fareham Borough Council has purchased the land and in conjunction with the Wildlife Trust it plans to implement tree planting projects on the land to further enhance its ecological value. Dedicating the path and extinguishing that part of Footpath 65 that runs through the field will enable FBC to create more space and maximise tree planting opportunities, protecting and enhancing the land's environmental value while preserving public access.

As part of these plans the proposed path will be widened and re-fenced with post and rail fencing, improved surfacing works will be carried out and the path raised and surfaced where necessary. It is also proposed to remove any stiles which are currently on the route.

Having considered the application and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds to make the requested orders.

**3. Other options considered and rejected:**

N/A

**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: 31 March 2025**

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**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

Application Reference: PPO 5260  
Fareham Borough

Location

*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

<b>Decision Maker:</b>	Jonathan Woods <i>Countryside Strategic Manager</i>
<b>Date:</b>	31 March 2025
<b>Title:</b>	Application for a Public Path creation and extinguishment – Fareham Footpath 65
<b>Reference</b>	PPO 5260

**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 create public footpath rights and extinguish part of Fareham Footpath 65 that will no longer be needed for public use as a result of the proposed creation.

### Recommendation(s)

2. That the application should be accepted and authority given for the making of concurrent orders under Sections 26 and 118 of the Highways Act 1980 to create and extinguish public rights of way, as shown on the Location Map at Appendix 1. The route to be created will have a width of 3.5 metres as shown between Points A and D on the attached plan.
3. 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 that it be submitted to the Secretary of State to enable the applicant to promote the Order, subject to any additional information that comes to light as a result of this process.

### Executive Summary

4. This is an application made by Fareham Borough Council ('The Applicant') in February 2025 to create a footpath in Fareham and extinguish part of Fareham Footpath 65. Both paths run through land owned by the FBC. The application has been made in the interests of both the landowner and the public on the basis that the path being created is the path that has been used by the public since the early 1980s.
5. Fareham Borough Council has purchased the land and in conjunction with the Wildlife Trust it plans to implement tree planting projects on the land to further enhance its ecological value. Dedicating the path and extinguishing that part of Footpath 65 that runs through the field will enable FBC to create more space

and maximise tree planting opportunities, protecting and enhancing the land's environmental value while preserving public access.

6. As part of these plans the proposed path will be widened and re-fenced with post and rail fencing, improved surfacing works will be carried out and the path raised and surfaced where necessary. It is also proposed to remove any stiles which are currently on the route.
  
7. Having considered the application and supporting evidence, and having had regard to consultation responses, it is considered that there are sufficient grounds to make the requested orders.

## **Legal framework for the decision**

### **HIGHWAYS ACT 1980**

#### **Section 26: Creation of public rights of way**

Compulsory powers for creation of footpaths [bridleways and restricted byways].

- (1) Where it appears to a local authority...that there is need for a footpath [bridleway or restricted byway] over land in their area and they are satisfied that, having regard to—
  - (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area, and
  - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in section 28 below, it is expedient that the path or way should be created, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

#### **Section 118: Stopping up of footpaths, bridleway and restricted byways**

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a "public path extinguishment order".

- (2) The Secretary of State shall not confirm a public path extinguishment 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 it is expedient so to do having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

**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**

- (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**

- (1a) 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**

### ***Hertfordshire County Council v Secretary of State for the Department of Environment Food & Rural Affairs [2006]***

Hertfordshire County Council made public path extinguishment orders under section 118 of the 1980 Act and entered into related creation agreements under section 25 for the creation of replacement paths. The agreements were to become effective immediately before the extinguishments of the related lengths of paths. Following an inquiry, the Inspector appointed by Secretary of State declined to confirm the extinguishment orders, owing to the inability of the public to object to creation agreements in the same way as a public path order. This decision was upheld, first by Sullivan J and then by the Court of Appeal. The correct interpretation of section 118 precluded taking creation agreements into account, but did allow concurrent creation or diversion orders to be considered.

Whilst creation agreements that are conditional and rely on the confirmation of the order cannot be taken into account when determining orders, a sealed unconditional creation agreement already in force may be considered.

### **Description of the existing and proposed diversion route(s) (refer to the map at Appendix 1)**

8. The definitive alignment of Fareham Footpath 65 commences at a junction with Old Street, Point A on the plan and proceeds northwards to Point B then north-eastwards through an arable field to Point C, then eastwards to Point D. The length of that part of Fareham Footpath 65 to be extinguished is 294 metres.
9. The proposed route to be created commences at a junction with Old Street, Point A proceeding north-eastwards along a field edge to the east of Footpath 65, with a housing to the east, terminating at Point D. The length of the proposed creation is 282 metres.

### **Issues to be decided**

10. Before making an order under section 118, the County Council must be satisfied that the path (or part of the path) "is not needed for public use". Assuming this test is met, then prior to confirmation the authority must be satisfied that it is expedient to confirm the order, having regard to the extent to which the path would likely be used by the public if the order were not made, and the effect of the extinguishment on the land served by the path.
11. Section 26 of the Highways Act 1980 allows for the creation of rights of way if the authority is satisfied that there is a need for the new path or way, having regard to the extent to which it would add to the convenience or enjoyment of the public, and any rights of persons interested in the land, taking into account the provisions for compensation set out in section 28.
12. If an application is approved and an Order made, then the width of the created 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.
13. 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.

14. Although the tests set out in section 118(2) is only applied at confirmation stage, given that the County Council has discretion in whether or not to make an Order, it sensible to have regard to this provision when deciding whether or not to make the Order.

### **Background to the Application**

15. The application was submitted in February 2025 by Fareham Borough Council (FBC).
16. FBC has ceased agricultural activities on this land for the next 100 years and plans to implement tree planting projects on the land to further enhance its ecological value. Diverting and formalising the legal right of way onto the used path will create more space, enabling the maximisation of tree planting opportunities, whilst protecting and enhancing the land's environmental value, and preserving public access.
17. FBC is working with the Hampshire and Isle of Wight Wildlife Trust, which will carry out the works associated with tree planting in the field. As part of these works the footpath will be made wider - there is currently a barbed wire fence bordering the used path which will be replaced with post and rail fencing. The field edge path needs drainage works and will be widened as part of the improvement works to make the path usable all year round.

### **Consultations**

18. The following people and organisations have been consulted on this application: Fareham Borough Council, The Ramblers and the Open Spaces Society. Additionally, the County Council Member for Fareham Borough, Councillor Hayre, has been made aware of the application. Where responses were provided, these are set out below.

#### The Ramblers

19. The Ramblers confirmed that they would support this application as it is basically a 'diversion' onto the currently walked route. They are pleased to hear the path will be widened and would like to see some improvements to one or two very wet sections of the new route. They also pointed out that a wider path would help with the drainage issues.

### **Consideration of the legal tests**

*Whether the authority is satisfied that there is a need for the new path or way*

17. Officers consider it is expedient that this part of Fareham Footpath 65 should be stopped up on the grounds that it is not needed for public use, due to the creation of the path which has been used by the public just east of the definitive line.



*The effect which the creation would have on the rights of persons interested in the land*

18. As this path has been used since the 1980s Fareham Borough Council is content to formalise this path as the definitive line.

*Whether the existing path is needed for public use*

19. The cross-field path will not be needed for public use as a consequence of the creation order.

*The extent to which the existing path would likely be used by the public if the order were not made*

20. The public have chosen to walk the field edge path since the 1980s, and so that part of the definitive line of Fareham Footpath 65 would not be used even if the extinguishment order were not made.

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

21. The order would not have any effect on the land over which the new right of way is created due to the fact that it has been in situ and used by the public for almost 30 years.

## **Conclusions**

*Whether it is expedient to confirm the Order*

22. As part of Footpath 65 has not been used for many years owing to the public preferring to use the field edge path (which will be formalised by the creation order), it is considered that the section to be extinguished will not be needed for public use. It is considered that the legal tests have been met.
23. In terms of whether it is expedient to make the order in the first instance, it is considered that it would be in the interests of public and the landowner to create and extinguish part of Footpath 65 onto a route that will improve public enjoyment of the path as a whole.
24. It is therefore recommended that the application is accepted, and that authority is given for the requested orders to be made under sections 118 and 26 of the Highways Act 1980.

## 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.)

#### Document

Application Reference: PPO 5260  
(Fareham Borough)

#### Location

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

## 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:**

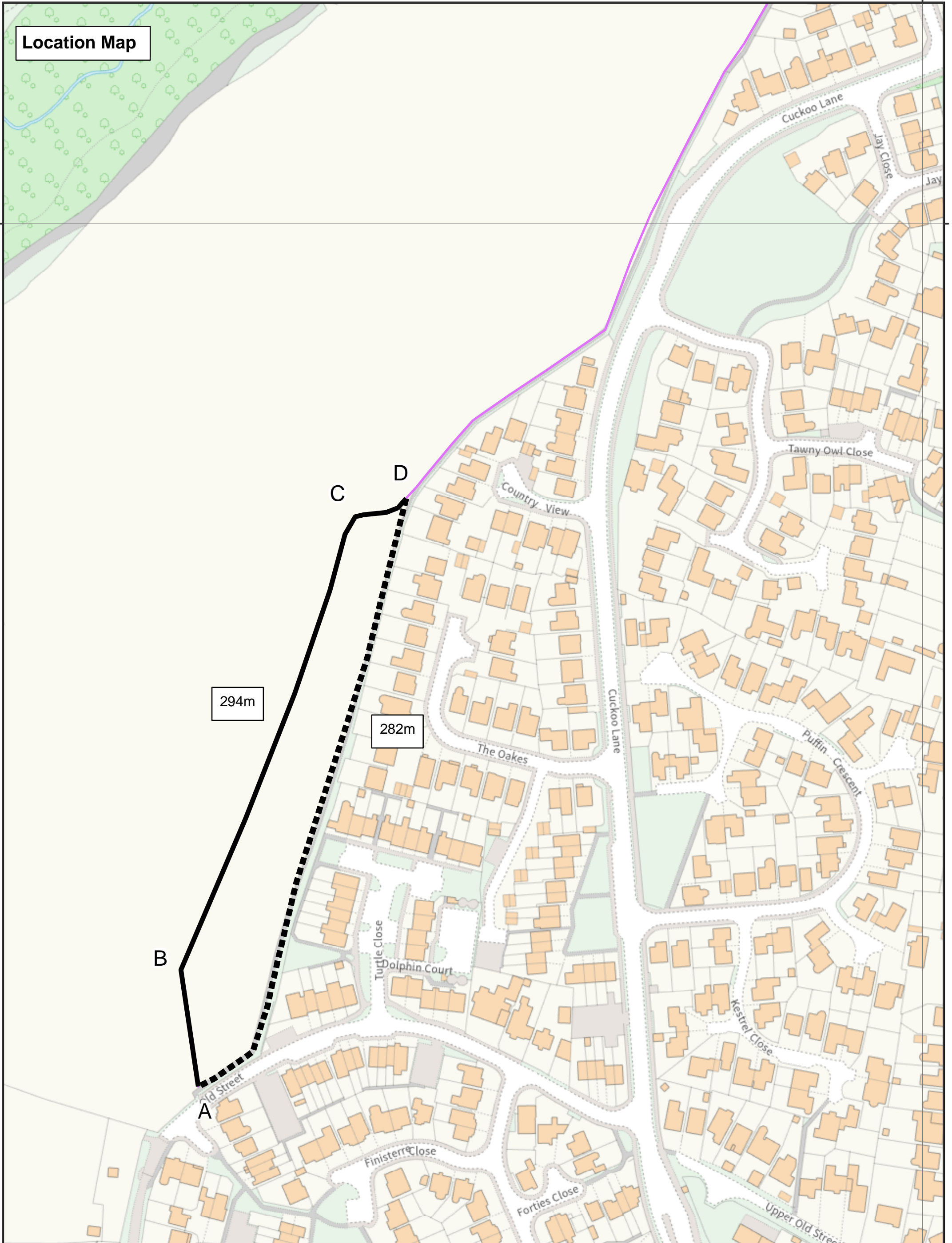
Hampshire County Council, in its capacity as 'surveying authority', has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981. It is not considered that there are any aspects of the County Council's duty under the Equality Act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



**Creation of Footpath Rights  
 in Fareham, Extinguishment of  
 Part of Fareham Footpath 65**

**LEGEND 1:1,500**

	Footpath
	Footpath to be deleted
	Footpath to be Diverted

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