

HAMPSHIRE COUNTY COUNCIL
Officer Decision Record

Decision Maker:	Jonathan Woods
Title:	Application for a Public Path Diversion Order of Bentworth Footpath 5

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1. The decision:

1.1 That an Order is made under Section 119B of the Highways Act 1980, to divert Bentworth Footpath 5.

2. Reason(s) for the decision:

2.1 The footpath currently crosses through the school grounds; the application has been made to improve the security of St Marys Bentworth Church of England Primary School to safeguard pupils.

3. Legal Framework

*A **special extinguishment diversion order** under s.119B provides for the diversion of a footpath, bridleway or restricted byway in the interest of **school security** (s.119B(1)(b)(iv)).*

119B.— Diversion of certain highways for purposes of crime prevention, etc.

(1) This section applies where it appears to a council -

(b) that, as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from -

(i) violence or the threat of violence,

(ii) harassment,

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity,

that the line of the highway, or part of that line, should be diverted (whether on to land of the same or another owner, lessee or occupier).

(11)

The Secretary of State shall not confirm a special diversion order made by virtue of subsection (1)(b) above, 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 of the highway is expedient as mentioned in subsection (1)(b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to—

(a) any other measures that have been or could be taken for improving or maintaining the security of the school,

(b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,

(c) the effect which the coming into operation of the order would have as respects land served by the existing public right of way, and

(d) the effect which 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 (c) and (d) above the Secretary of State or, as the case may be, the council shall take into account the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

4. Background

4.1 Concerns have been raised on numerous occasions in the past by both the School, the School Governing Body, the Diocese and visiting Ofsted Inspectors in respect of the existing footpath which crosses the school grounds directly through the playground.

4.2 Safeguarding of the pupils using these spaces is extremely difficult to achieve when the playground can be accessed by members of the public exercising their legal right to use the existing footpath and walking through the school grounds. The use of the path also raises concerns in terms of Health and Safety in respect to dogs crossing a play area used by pupils.

4.3 An application has been made for the diversion in order to improve the ability of the school to safeguard pupils.

4.4 The School have extra staff supervising at all breaktimes to take into account the right of way and the extra supervision required to keep all pupils safe. Some pupils have special education needs, which makes them vulnerable as they cannot follow risk procedures and will always approach a dog or adult no matter what they are taught. There are also some children with court orders who are vulnerable as they have a parent who cannot pick them up and should not know where they are. This makes adults on site even more tricky. Because of these circumstances these individuals all have an adult with them at playtimes to ensure they are safe. They have trained all children in extra measures (that other schools do not have to do) to enable their pupils to be safe should a dog or walker enter the premises. They have added safety measures to ensure that entry to the main buildings would be harder if entry via the rights of way took place. They must check the main hall e.g. toilets if it has been open so that they

are assured that no strangers have entered unauthorised. Their site manager checks the gates and the site more frequently due to the open access.

4.5 Having the right of way through the playground is a fundamental security issue, the effect of the order means that they will be able to secure their grounds and their buildings from unauthorised access and it means they have a full visual on entry and exit points.

4.6 The existing and proposed routes both run through the same land ownership and therefore the impact to the landowners of this diversion is negligible.

4.7 The proposed route is not considered to be substantially less convenient for the user, and it will improve the safety of pupils. The proposed route is slightly longer than the existing route, it is a 1.5-metre-wide grass path which will run outside the school grounds. The definitive line terminates in the middle of the field and therefore we are taking this opportunity to tidy up the network. The termination points will be altered because of this, with one connecting with Church Road, the other with Footpath 6.

5. Consultation Responses

5.1 Not all the consulted parties responded to the consultation, those which did raised no objection.

6. Other options considered and rejected: Not applicable.

7. Conflicts of interest: Not applicable.

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

9. Supporting information: None

Approved by: Jonathan Woods
Strategic Manager Countryside

Date:

On behalf of the Director of Culture, Communities
and Business Services

Consultations with Other Bodies:

Local Member – Councillor Kemp-Gee

Councillor Kemp-Gee was consulted on this proposal and commented that he thinks the application is a sensible one.

East Hants District Council

East Hants Council were consulted on this proposal but made no comment.

Bentworth Parish Council

Bentworth Parish Council were consulted on this proposal but made no comment.

The Ramblers

The Ramblers have no objections to the diversion application.

The Open Spaces Society

The Open Spaces Society were consulted on this application and would be prepared to accept this proposal.

Alton Police

Sergeant Daniel Ross was consulted on this application but made no comment.

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. The proposed is not considered to be substantially less convenient.

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:

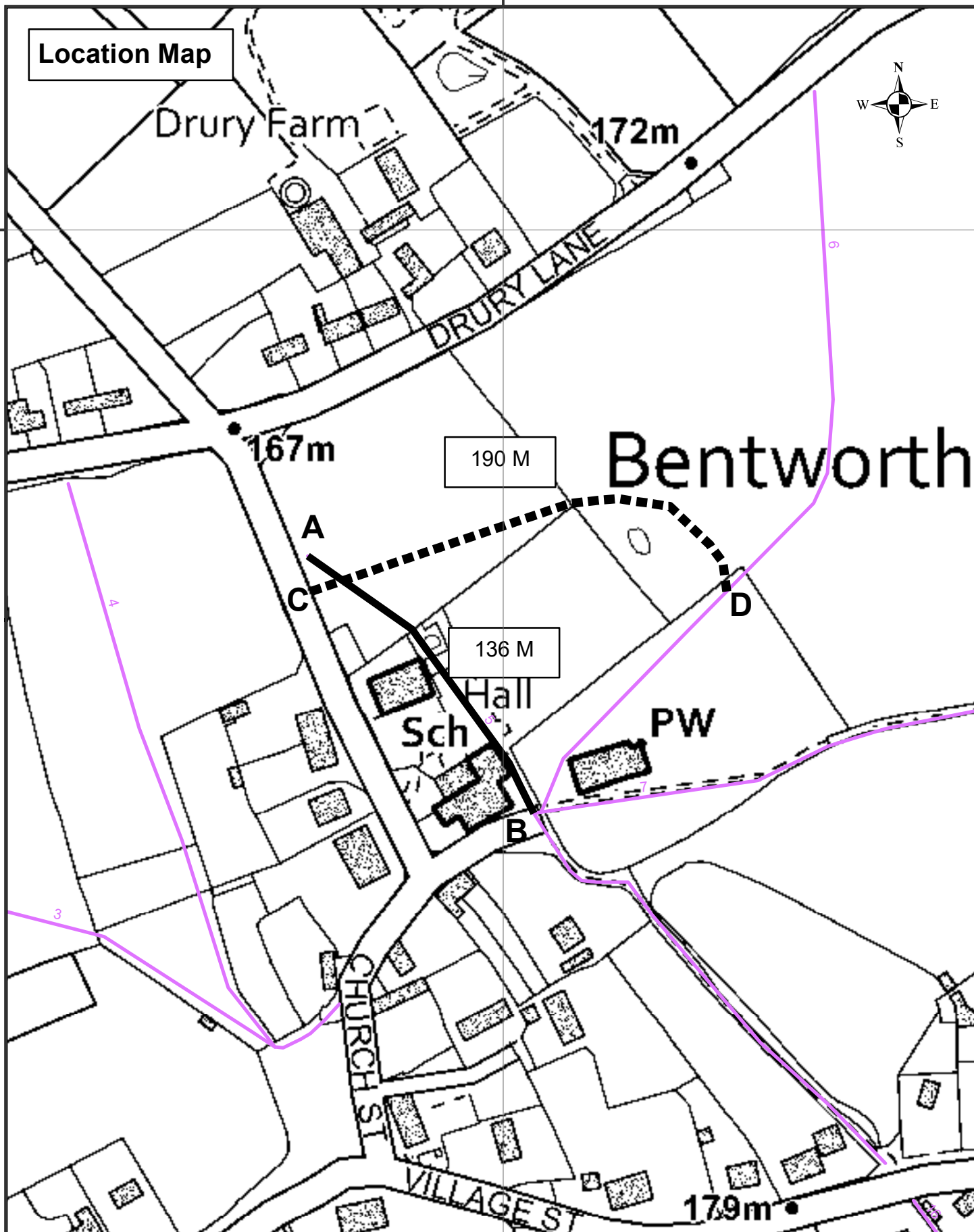
No impact identified.

Location Map






140500

140500



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LEGEND

-  Public Footpath
-  Footpath to be Extinguished
-  Footpath to be Added

Countryside Access Team
Culture, Communities & Business Services
Castle Avenue
Winchester, SO23 8UL

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