

**HAMPSHIRE COUNTY COUNCIL
Officer Decision Record**

Decision Maker:	Jonathan Woods
Title:	Extinguishment Order in Kingslere Avenue, Leigh Park, Havant

Tel: 0370 779 0112

Email: tara.pothecary@hants.gov.uk

1. The decision:

1.1 That the Strategic Manager Countryside gives the authority for an Order to be made under Section 118 of the Highways Act 1980, to extinguish two unrecorded footpaths in Havant Borough.

1.3 A plan of proposed routes to be extinguishment is shown on the plan attached.

2. Reason(s) for the decision:

2.1 Portsmouth City Council has applied to extinguish two unrecorded footpaths on land within its ownership in the Borough of Havant. The paths were the subject of an application for a Definitive Map Modification Order under the provisions of the Wildlife and Countryside Act 1981 (reference DMMO/1157), which is yet to be determined. As a result of development taking place on the land in question, the two claimed route have been built over, and footpaths connecting Dunsbury Way to Kingsclere Avenue have been dedicated and recorded on the Definitive Map as Havant Footpath 528.

2.2 The legal test for section 118 of the Highways Act is that the routes are no longer needed for public use. In light of the provision of the new routes, the County Council is satisfied that this legal test is met.

Legal Framework:

Section 118 - Stopping up of footpaths and bridleways

Where it appears to a council as respects a footpath or bridleway in their area 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.

3. Background

3.1 The two routes that are the subject to this application were initially claimed as public footpaths under Section 53 of the Wildlife and Countryside Act 1981 in an application that was received by the County Council in 2013. This application is yet to be determined but because the landowner, Portsmouth City Council, wished to develop the land, through Havant Borough Council it sought to first divert the routes under Section 257 of the Town and Country Planning Act 1990, and then to divert them under Section 119 of the Highways Act 1980. Both orders were opposed and referred to the Secretary of State for determination. However, due to drafting or procedural defects, neither order was confirmed.

3.2 The development of the site has now been completed, and Portsmouth City Council now seeks to extinguish both routes under Section 118 of the Highways Act 1980, on the basis that neither route is needed for public use. To facilitate this extinguishment, it has dedicated a right of way on foot between Dunsbury Way, and the adopted footways connecting to Kingsclere Avenue (now recorded as Havant Footpath 528).

3.3 It should be noted that, although in making this application Portsmouth City Council has chosen to treat the DMMO routes as if they were public, the evidence submitted in support of that application is untested, and it is by no means certain that the DMMO application would be successful once determined.

4. Consultation responses

4.1 The applicant for the DMMO ('the objector') has objected to the extinguishments as he feels the original routes to be more direct and convenient link between Kingsclere Avenue and Dunsbury Way used daily by many people. They feel that the alterations have effectively replaced two short paths with a single much longer inconvenient meandering one.

4.2 The objector feels that whilst the road (part of the A-C section) has been designated as a "Home Zone", experience has shown that it is still in essence a road, where motor vehicle drivers presume priority and still drive at (in excess of) local road speeds with all the inherent dangers thereof.

4.3 The objector also feels that the housing development could have still been implemented with little or no alteration to the existing routes, particularly the A to B section. Leaving the routes virtually unchanged need not have altered the siting of any units (with the possible exception of a single unit at the south-east point "B" corner). The bulk of the alterations appears to have been to accommodate the play area sited centrally which could still have been put in place without altering the original path lines.

5. Response to the above objection

5.1 The difference in distance between the dedicated and claimed paths would result in an increased distance of approximately 38 metres in lieu of the A-C route, and approximately 50m in lieu of the A-B route. Although the replacement route is not as direct as the claimed routes, the additional distance is not considered to be substantially less convenient.

5.2 Although the objector's concerns regarding interaction with motor vehicles is understandable, it is noted that part of the line of the claimed DMMO route between A-C also runs over the new roadway. The new route dedicated by Portsmouth City Council also runs over part of the road leading into the site from Dunsbury Way, but apart from a point where it crosses the road further to the north-west, is completely off-road. It is also noted that, in addition to the dedicated route of Havant Footpath 528, the majority of the site is now bounded by off-road footways which enable pedestrians to walk across the site without interacting with vehicular traffic.

5.3 Whilst the objector's comments regarding the layout of the site are understood, the decision to be made on this application is whether the DMMO routes can be extinguished in light of the route that has been dedicated. It is not an opportunity to revisit previous planning decisions. The legal test for an extinguishment order is that the routes are not needed for public use, and officers are satisfied that these routes are not needed for public use due to the dedication of Havant Footpath 528.

5.4 The aerial image below shows the site as it is now and apart from the entrance from Dunsbury Way and a crossing point, the route is all off-road.



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

<p>Approved by: Jonathan Woods Strategic Manager Countryside</p> <p>-----</p> <p>On behalf of the Director of Culture, Communities and Business Services</p>	<p>Date:</p>
--	---------------------

Appendix A

Consultations with Other Bodies:

Havant Borough Council
Havant Borough Council were consulted on this proposal and have no objection.

Local Member – Councillor Jackie Branson
Councillor Branson has been consulted on this proposal.

The Ramblers
The Ramblers were consulted and confirmed they have no objections to the proposal.

The Open Spaces Society
The Open Spaces Society have been consulted and have no objections to the 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 s118 Highways Act 1980. These statutory tests must be considered in conjunction with the overarching duty of s149 Equalities Act. The County Council considers that the extinguishments meet the legal tests in that they are not needed for public use due to Havant Footpath 528.

Impact on Crime and Disorder:

1.3. It is unlikely that this proposal will have any impact on reported crime in this area.

2. Climate Change:

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

No impact identified.

b) Environmental:

No impact identified.

471000

Location Map



108500

108500

B

C


A

471000



**Application for a Public Path
Extinguishment Order
in Kingslere Avuanue, Havant**

LEGEND

Public Footpath 

Footpaths to be Extinguished 

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

1:1,000

© Crown copyright and database rights 2020 Ordnance Survey [100019180].
You are permitted to use this data solely to enable you to respond to,
or interact with, the organisation that provided you with the data.
You are not permitted to copy, sub-licence, distribute or sell any of
this data to third parties in any form.