

**Application Number: 20/11288** Right of Way / Footpath Diversion

**Site:** Land at HAMER WARREN, SOMERLEY, ELLINGHAM  
HARBRIDGE & IBSLEY

**Development:** Diversion of footpath

**Applicant:** Somerley Energy

**Agent:** Aardvark EM Limited

**Target Date:** 12/02/2021

**Case Officer:** Vivienne Baxter

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**1 DETERMINING APPLICATION FOR PUBLIC PATH DIVERSION ORDER**

This Committee has the authority to determine the application for a footpath diversion order relating to land at Hamer Warren, Somerley, Ellingham, Harbridge and Ibsley "Hamer Warren".

**2 BACKGROUND**

- 2.1 Full planning permission (20/11073) was granted on February 3rd 2021 for development at Hamer Warren, Somerley for the construction of a renewable led energy generating station comprising ground-mounted photo voltaic solar arrays together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure and landscaping and biodiversity enhancements.. The proposal requires the diversion of part of the definitive route of a public footpath (FP38) which crosses the southern part of the site which was subject of the above planning application as some of the approved arrays cross the definitive route.
- 2.2 It should be noted that the path is not currently walked along its definitive route within the site but along the proposed route.
- 2.3 This application is made as a separate application relating to a Public Path Diversion Order, pursuant to Section 257 of the Town and Country Planning Act 1990 ("S.257"), to formalise the revised route of FP38 in order to facilitate the approved development. S.257 permits the Council to exercise its discretionary power to make such an Order for the diversion of a footpath which it is necessary, in circumstances such as those relating to Hamer Warren, to enable development to be carried out in accordance with a planning permission.
- 2.4 The approved layout would include the provision of solar arrays across the definitive route of the footpath necessitating the stopping up of the footpath and extinguishment of the public right of way where it crosses the site. In this particular case, the definitive footpath is not presently accessible and the proposed route would be maintained on the route currently walked and sign posted.
- 2.5 It is therefore propose that in response to the application received from the applicant, the Committee exercises its power to make the Public Path Diversion Order ("the Order") in relation to Hamer Warren and to follow the procedure below.

### 3 PROCEDURE TO BE FOLLOWED

The procedure to be followed in relation to the Order is:

- 3.1 The applicant's consultant undertook prior engagement with the Hampshire County Council Countryside Officer who agreed to remove their objection to planning application 20/11073 subject to the completion of the footpath diversion application.
- 3.2 The Council has undertaken a separate consultation process on this proposal in December 2020 and two responses were received:

**Ellingham, Harbridge and Ibsley Parish Council** : Recommend permission on the basis that the application for the diversion of the footpath is put in the name of the landowner, Somerley Estate. And that this footpath is cleared and maintained to the designated width of 1.5 metres.

**Countryside Service, HCC as Highway Authority of Public Rights of Way:** No objection to the diversion of the route to that shown on the submitted plan. They go on to advise that the route actually used on the ground differs from the legal route and that this situation has been in place for some time. Diverting this path will fix an anomaly on the definitive map and allow development to go ahead. The path should a minimum of 2.5 metres if fully enclosed in line with our design standards. Narrow sections of the path may need surfacing work to bring them up to standard and this would include the removal of any obstructions and clearing/maintenance of vegetation to allow for the full width. Our recommended specifications for surfacing and width of paths can be found in the Countryside Service Design Standards on our web page at <https://www.hants.gov.uk/landplanningandenvironment/countryside/designstandards> Countryside Service request to be consulted on the certification of the route. Subject to this we have no objection to the diversion of Ellingham Harbridge and Ibsley Footpath 30 to the route shown on plan 2065/DO13.

Much of the walked route is wide enough for a vehicle although it narrows when crossing the field subject of the planning application. The applicant is currently in discussion with Countryside Services with regard to the suggested widening. Whilst vegetation could be removed along some of the length, existing fencing may be less than the desired width and this has not hampered the use of the footpath.

- 3.3 **Make Order:** the Council should make the Order but it will not be effective until it is confirmed.
- 3.4 **Advertise Order:** upon making the Order, the Council should:
  - Publish a notice in at least one local newspaper stating the general effect of the Order, that it has been made and is about to be submitted for confirmation or to be confirmed as an unopposed order; specifying a place where the Order can be inspected, free of charge and that copies of it may be obtained at a reasonable charge at all reasonable hours; and stating that any person can object to or make representations on the Order, to the Council, within a period of 28 days following the date of publication of the notice.
  - Display a notice prominently at each end of that part of the Footpath that is to be diverted, accompanied by a plan showing the general effect of the Order.

- Serve a copy of the Notice and Order on relevant Consultees.
  - Make the Order available for inspection as detailed above and at the District Council.
- 3.5 **Objection period:** there is a 28 day period to object to the making of the Order following the publication of the notice. If there are objections 3.6 below applies, if not 3.7 onwards below applies.
- 3.6 **Objections:** objections should be sent to the Council. These are copied to the applicant and it is the applicant's responsibility to try to resolve them. If there are unresolved objections, the Council can decide not to proceed with the Order and should notify the applicant, Consultees and objectors. If the Council decides to proceed, the Order must be referred to the Secretary of State for Environment, Food and Rural Affairs ("the SoS") for confirmation. If the objection was made by a Local Authority or a National Park Authority, the SoS must hold a local inquiry. If the objection was made by anyone else, the SoS must hold either a local inquiry or give any objector the opportunity of being heard by an inspector appointed by him. The SoS then decides whether or not to confirm the order with or without modifications.
- 3.7 **Confirmation:** where no objections are received within the prescribed time limit (or those that are received have been withdrawn) and the Council does not wish to modify the Order, so long as the applicant carries out works to the satisfaction of the Highway Authority the Order may be confirmed (signed and dated) by the Council.
- 3.8 **Advertise Confirmation:** as soon as possible after confirmation the Council should repeat Step 3.4 above stating that the Order has now been confirmed. The Council should also send a copy of the notice and confirmed Order to the applicant, Land Charges Department and Ordnance Survey.
- 3.9 **Expiry of Challenge Period:** a person can apply to the High Court to quash the Order within six weeks following the confirmation date if the decision-maker has acted ultra vires or not carried out the correct legal procedures in making the Order.

#### 4 CONCLUSIONS

The Council should make the Order and, if there are no outstanding objections, should then confirm the Order.

#### 5 FINANCIAL IMPLICATIONS

None

#### 6 ENVIRONMENTAL IMPLICATIONS

None

#### 7 CRIME AND DISORDER IMPLICATIONS

None

## **8 EQUALITY AND DIVERSITY IMPLICATIONS**

None

## **9 RECOMMENDATIONS**

- 9.1 The Committee exercise its discretionary power to make the Order and follow the procedure detailed at paragraph 3 above and, if paragraph 3.7 applies, to delegate authority to the Chief Planning Officer to confirm the Order.
- 9.2 If objections are received following the making of the Order which are not withdrawn, officers must refer this matter back to this Committee for consideration.

### **Further Information:**

Vivienne Baxter

Telephone: 023 8028 5442



# New Forest DISTRICT COUNCIL

Tel: 023 8028 5000  
www.newforest.gov.uk

Claire Upton-Brown  
Chief Planning Officer  
Planning  
New Forest District Council  
Appletree Court  
Lyndhurst  
SO43 7PA

## PLANNING COMMITTEE

April 2021

Land at HAMER WARREN, SOMERLEY,  
ELLINGHAM HARBRIDGE & IBSLEY

20/11288

Scale 1:10000

N.B. If printing this plan from  
the internet, it will not be to  
scale.

