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Your reference **F/24/96895**

Date

11 July 2024

E-mail

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For the attention of the Case Officer,

Planning reference: F/24/96895

Site location: [One Horton Heath]

Proposal: Construction of areas of Green Infrastructure for the One Horton Heath Development, including open space, landscaping, bridleways (to include an upgrade and diversion of an existing Public Right of Way and causeway works), footpaths, SuDS, play areas and ecological and biodiversity enhancements (proposal constitutes EIA development)

Consultation response: Objection.

[We also highlight to the need to enter into a S106 legal agreement to secure PROW obligations.]

Thank you for consulting Hampshire Countryside Service (the Service) as Highway Authority in respect of Public Rights of Way (PROW) and Commons Registration Authority. We also manage Country Parks and Countryside Sites throughout Hampshire. Please accept this as our response to the above application, taking into account the material considerations relating to Public Rights of Way, Commons and impacts to Hampshire County Council (HCC) Country Parks and Countryside Sites.

A copy of the Definitive Map of Rights of Way and Definitive Statement and Countryside Sites can be found at

<https://maps.hants.gov.uk/rightsofwaydefinitivemap/> and

<https://www.hants.gov.uk/landplanningandenvironment/rightsofway/definitivemap>

Constraints:

The application seeks permission for the development of the Green Infrastructure [GI] for the One Horton Heath [OHH] Major Development. This includes changes to the Public Rights of Way [PROW] network. Numerous existing PROW run through the OHH site, including the proposed GI areas.

The submitted 'Public Rights of Way (PROW) Upgrades and Diversions Table' lists the PROW and the associated development proposed as part of this application – i.e. those that are within the GI areas of the OHH site. The development seeks widespread upgrade of footpaths to bridleways, with local diversion of their route to reflect the wishes of the developer.

PRoW Ref	Section of Upgrade	Linear meterage (m)	Application	Upgrade to	Diversification (Y/N)	Cost per metre (as per 11.07.24)	Lifecycle multiplier	Commutated sum
703	C-D	807	GI	Bridleway	Y	£120	3	£290,520
702	F-G	528	IDR (Internal Distributor Road?)	Bridleway	Y	£120	3	£190,080
701	G-H	150	GI	Bridleway	Y	£120	3	£54,000
7	H-I	184	GI	Bridleway	Y	£120	3	£66,240
701	M-N	254	GI	Bridleway	N	£120	3	£91,440
701	N-O	279	GI	Bridleway	Y	£120	3	£100,440
10	Q-R	219	GI	Bridleway	Y	£120	3	£78,840
10	R-S	361	GI	Bridleway	Y	£120	3	£129,960
10	S-T	33	GI	Footpath	N	£100	2	£7,920
11	S-U	535	GI	Bridleway	Y	£120	3	£192,600
11	U-V	174	GI	Bridleway	N	£120	3	£62,640
							TOTAL=	£1,074,600

Notes:

- It is assumed that no lighting is proposed along any of these PROW, existing or new.
- Commuted sums have been provided by HCS for each PROW work proposed in the above table.
- Commuted sum for FP702 is not included in total for this application (to be secured under IDR application)

- Final commuted sums need to be calculated, to include additional sums for specifically required PROW furniture, such as drainage, embankments, bridges, etc. where applicable.
- To be subject to BCIS all tender index.

Existing planning applications for OHH:

- Development Plan and Outline Planning Application (OPA) O/20/89498
- First phase of OHH - FRP F/20/89500
 - S106 secures
 - FP7 (points I to H):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP701 (points G to H):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP702 (points G to F):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP702 (points E to F):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP703 (points E to J):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP703 (points E to D):
 - Upgrade from FP to BW
 - Min 3m width – bound surface and lit
 - FP703 (points C to D):
 - Upgrade from FP to BW
 - Min 3m width – unbound surface to HCS design standards
 - Off site FP703 (points A to C):
 - Upgrade from FP to BW
 - Min 3m width – unbound surface to HCS design standards
 - Enter into S278 highway agreements to suit
 - PROW commuted sum of £408,990 (index linked)
- Link Road between Allington Lane and Burnetts Lane Link roads F/21/91185

- Internal Distributor Road Application F/23/96631 – pending determination.

Hampshire County Council Countryside Service, the Highways Authority in regards to the PROW network, operate principles for the consideration of public highway that is PROW for planning development and applications. The following are relevant to this application and should be followed:

1. The existing Public Rights of Way [PROW] network should be shown on all relevant application plans, such as the site plan.
2. It is typically taken that the Definitive Map is the definitive route and form of all PROW in Hampshire.
3. Development proposals should not be submitted unless sufficient space and margins within the site are provided for PROW.
4. Any adverse impact to the PROW Network, on site and off site, caused by proposed development shall be avoided, mitigated, and/or compensated.
5. The impact of a development (of any size) on a PROW can be disproportionately adverse – particularly if the PROW runs through the site. This adverse impact will need to be avoided, mitigated and/or compensated, proportionate to the impact on the PROW network.
6. The safe and continuous right of access for the public is paramount for all parts of the PROW network.
7. PROW shall be retained on their existing lines if at all possible. This is considered a positive outcome for the local community. Unless rerouting is an enhancement of and protects the PROW.
8. PROW should have segregation from bound public routes (roads, pavements) and PROW shall not be incorporated into private estate infrastructure (pavements, access drives, parking and/or gardens, etc).
9. PROW should remain unenclosed.
10. New crossings of PROW shall be kept to a minimum. They require careful design, to be approved by Hampshire County Council, Countryside Service, Access team.
11. Planning permissions granted by Local Planning Authorities (Under the Town and Countryside Planning Act 1990) do not give permission to carry out any access from, works on, stopping up, or diversion of a PROW.

Commentary:

Comments on particular submitted application plans:

- Plan 039.0014.018 rev L – summary of on-site prowl works (north)
- Plan 039.0014.019 rev M– summary of on-site prowl works (south)

These above plans are listed as supporting information and show the Summary of on-site PROW works as previously discussed at outline and over planning application stages. These show an overview of the principle PROW works proposed – dominated by upgrading FP to BW and diversion of existing route in many places. This principle is sound, however, the additional details to proposed PROW works in the GI areas raise significant issues, and the absence of details to areas outside the

GI stie areas, creates concern regarding the legislative process to enabling the delivery of the PROW changes.

The below plans show a higher scale of detail for the proposed works to PROW within the GI areas. Of particular note are:

1. Notable diversions to edge of site areas, resulting in no control of enclosure.
2. The 'bendy' nature of the diversions.
3. The design approach to the Design Specification for FP being upgraded to Bridleways.
4. A lack of information of any works occurring outside the specified GI areas.
5. Notable fencing detrimentally enclosing PROW.

- DD579-L03 Rev F
 - recurring problem of mis-identification of permissive paths as PROW – permissive paths are not footpaths nor bridleways.
- DD579-L06 R6 – FP 703 (short part)
 - diversion of 703 is ok. However, problems – plan states a permissive path as a footpath (type of PROW). This needs to be reworded. Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders.
- DD579-L07 R5 – no PROW present.
- DD579-L08 R5
 - shows existing PROW 702 and 703 outside of redline area
 - Problems – no information about PROW outside red line and proposed fence and maintenance access gate to the south-east end of the GI area looks to be on top of the existing PROW 702.
- DD579-L09 R6
 - problem - Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders. States a permissive path as a footpath (type of PROW) needs to be reworded.
- DD579-L10 R5
 - no PROW. Problem – states a permissive path as a footpath (type of PROW) needs to be reworded
- DD579-L13 R6
 - FP701 - Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders. There is a second proposed bridleway shown on the drawing, following the northern edge of Foxholes Wood. This is too 'bendy' for a bridleway, and will create dangerous situations in the interaction of users – particularly when encountering cyclists or horse riders attempting to navigate the bends. If this is a permissive route, not a proposed bridleway – then this needs to be made clear.
- DD579-L14 R6
 - FP701 and FP7 – diversion routes for FP7 and 701 are ok. Problems – gap in information around point D (no info). Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders. Tarmac footpath to

Barnetts Lane is not an existing footpath, not proposed to be one, but rather the diverted FP7 upgraded to Bridleway.

- DD579-L15 Rev 6
 - FP7, FP701 – ok – confirms diversion of FP7 onto tarmac surface.
 - Problem – only details within red line of application.
- DD579-L16 R6
 - shows FP11. Problems – no information about PROW outside red line. Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders. Proposed route hugs edge of GI area with no idea of what is adjacent to the southern edge – unacceptable and need to ensure a clear space to the south of the edge of the surface, and prevent enclosure and visibility obstructions.
- DD579-L17 R6
- DD579-L18 R6
 - FP10 and 11. Diversion between points R and Q of FP10 is acceptable. Problems – no information about PROW outside red line. Proposed rural bridleway must be suitable for pedestrians, cyclists, and horse riders. Proposed route of FP10 north of point R is not acceptable. It hugs the edge of GI area with no idea of what is adjacent to the edge – unacceptable and need to ensure a clear space to the nearside of the edge of the surface, and prevent enclosure and visibility obstructions. The route is also too ‘bendy’ for a bridleway with tight corners that may be blind. It will create dangerous situations in the interaction of users – particularly when encountering cyclists or horse riders attempting to navigate the bends.
 - A blue broken line, with intermittent ‘W’s is shown along the line of the proposed bridleway (diversion of FP10) but is not labelled on the key – what is this? If this is an underground water pipeline or similar – then it should be laid adjacent to the PROW surface, not directly under it – to aid with future maintenance.
 - Point S to T = retained as a footpath.
- 30454A/400 rev A – GI location plan

Comments regarding the proposed development:

1. Presentation of the GI drawings on the LPA site is confusing. The Plans are not grouped together but scattered and difficult to find information relating to PROW. Impacts are concealed in drawings – particularly the proposed enclosure via fencing.
2. Planning statement
Hampshire countryside Service disagree with the position of the planning statement. In reference to paragraphs 6.27-6.29 of the submitted planning statement; the scheme does not accord with policies DM1 and DM13 as it does not allow safe operation of the highway network (particularly for

bridleway users) and does not protect or enhance the PROW network. It therefore also does not accord to para 104 of the NPPF (2023).

3. The proposed line/route of the PROW

There are fundamental issues regarding the achievability of the proposed works to the PROW network. The application proposes changes to the PROW network that:

- a) Seeking to upgrade existing Footpaths to Bridleways – a supported proposal. However, the upgrades need to be done in full connected routes.

Suggested Solution: works on the ground to each section of PROW is carried out under S278 highway agreements and PPO (Public Path Order) applications made to the HA to request upgrade of the route to a bridleway. The routes can be dedicated, but will require completion across their full length before each dedication can be certified. Permissive, management and maintenance are carried out by the applicant/developer/land owner until the Certificate of maintenance is issued at end of local construction phase, commuted sum paid and upgrade dedication certified. The S106 would secure this process.

- b) The proposed diversion routes do not, in a number of locations, have acceptable design. They are pushed up to the edge of the application's site area and therefore they are not demonstrating being within a suitable green corridor and no control is possible as to what development may occur flush with that nearside edge of the PROW surface – whether fencing or walls, roads, or buildings. Not only is this a notable amenity and security impact, it also contributes to the issue of poor sight lines and blind bends. Based upon the building layouts of the FRP (first residential phase), such as shown on drawing 29607A/10 rev 0, this concern is real and significant. The plan shows very little space between dwellings, enclosed gardens to dwellings, and the hard surfaced road and pavement network of streets. Therefore, it is reasonable to assume all other residential parcels/areas will be as densely developed.

Suggested Solution: move proposed routes of PROW further into green corridors, extend site area of green corridors, or create conditions and/or legal agreement requirement to offset any development (fencing, walls, buildings, roads, etc) a given distance (5 metres) from the nearside edge of the PROW surface.

- c) The proposed diversion routes, in numerous places, are too 'bendy' they have tight bends and route that meander too much. Some meander to a PROW is supported, enhancing the amenity and countryside feel of the

route. However, the limit to this is public safety and convenience – these are bridleways – therefore pedestrians, cyclists and horse-riders need to be able to safely navigate, and share the route at speeds reasonable for their mode of travel. Tight bends and turns can result in blind bends, poor sight lines, apexing, and similar, risking collisions, and at a minimum, frustration of users. This is not suitable, good quality design.

Suggested Solution: allow with addressing point 2 above, straighten routes to be fit for purpose.

- d) Enclosure – the Highways Authority does not support enclosure of PROW – where an existing PROW was in open countryside, it is not protection nor enhancement to unreasonably enclosure that (or a diverted) route. Drawings DD579L20 rev R2 – Overall GI Landscape Proposals show consistent use of timber post and stock-proof mesh fencing to bound SuDS basins and along footpaths to protect ecological rich areas. This fencing along PROW is extensive (almost continuous) and is unacceptable. If these are critically necessary for ecological reasons – then conditions need to be imposed to ensure the fencing is removed once the ecological habitat has been established (ie. 1-2 years, not 10-15 years).

Suggested Solution: condition fencing to be temporary (ie. 1-2 years, not 10-15 years), set it back where necessary 5m from PROW surface, or, preferably, remove fencing.

4. The specification of the PROW

Bridleway is the PROW classification that grants permission for use by pedestrians, cyclists and horse-riders. Therefore, the design standard for them must reflect this. There looks to be no accommodation for equestrians. There is an absence of priority for cyclists and pedestrians for crossing points of the link roads. The ‘bendy’ nature of many areas of the proposed diversions are unacceptable – creating safety issues for the rightful users from lack of visibility and unreasonable severity and number of bends.

Suggested Solution: ensure Bridleway design meets HCS design standards for bridleways – remove some bends, ensure suitable visibility lines. Consider the BHS design guidance. Have link road traffic give way to PROW users, pedestrians and cyclists at crossing points.

5. Construction planning and public access to the PROW network.

Due to the extensive impact on the local PROW network, this development, and the wider OHH scheme, needs to carefully plan and manage the phased

construction on the site. Temporary closures of PROW should be kept to a minimum. Temporary diversions and construction planning that allows direct transfer of public access from the existing routes to the permanent diversions is encouraged. Public safety is critical. Communication with the public and suitable signage is important.

The submitted CTMP has absolutely no inclusion of the Public Highway that is the PROW network – a fundamental public safety aspect being that without management they provide the public a right to access the construction site of OHH, This CTMP is significantly incomplete. It should be revised to include consideration of Public Safety in regards to PROW – particularly critical considering the likely lack of knowledge and understanding of independent contractors and construction plant and vehicle operators that are likely to operate on the OHH site. The CTMP should include PROW and public safety relating to them, including management of the PROW in regards to temporary closure, continued access and/or temporary diversion throughout the phased approach to development on the OHH site.

The Landscape management plan also does not reference PROW. Not strictly required, but the PROW network requires management and as part of the GI areas – forms the key interaction between the landscape and its users. It should include information about offsetting planting from PROW surfaces, cutting and maintenance to prevent obstruction of PROW. It should also demonstrate the necessity of any fencing proposed to block off green spaces from PROW – an approach we object to.

Suggested Solution: A condition requiring the prior to commencement submission to and approval by the Highways Authority of a PROW management plan. This would include factors such as Health and Safety, design standards, maintenance and inspection duties, communication and interaction with the HA, complaints process, etc.

Revision of an improved CTMP (or include PROW elements within PROW management Plan or site management plan)

Revision of an improved Landscape management plan (or include PROW elements within PROW management Plan)

6. Legal process and commuted sums

In line with the process followed for planning permission F/20/89500 for the OHH FRP, the commuted sum for the on-site works carried out to the PROW network shall be secured in the S106 legal agreement, for which any planning permission granted shall be subject to. This total is £1,074,600. This is subject to review to ensure up to date values and the inclusion of maintenance for PROW furniture such as drainage or bridges.

7. Legal status Continuity

The legislation covering PROW require that there must be continuous access to pass and repass between two points of the Public Highway network. I.e. there cannot be dead ends for each user type. Therefore, a Bridleway cannot end in a footpath, but rather needs to end in a bridleway or higher designated highway type such as a public road or restricted byway.

This application proposes to upgrade a number of sections of existing footpaths to bridleways. However, any information about the continuation of those PROW beyond the GI site areas are absent. Therefore, for routes to be certified as Bridleways, this information must be present, approved, and the work completed along the entire, complete length of that PROW – within and outside the site areas shown in this application.

Therefore, any permission granted for this application will need to be subject to securing Public Path Order applications to dedicate the diverted routes upgraded to Bridleway. However, these dedications cannot be certified until the works to the remaining lengths of each Bridleway is completed. This does not prevent the work proposed being carried out under any permission hereby applied for, but does highlight the inability to certify the new status until all other works (to each PROW) are complete. To secure this protection and enhancement, and demonstrate the necessity to carry out this work and upgrade the routes, then this application's S106 legal agreement will need to secure not just the submission for applications for the upgrade to Bridleways, but also the completion of the works to the entire lengths of the PROW across the wider OHH site (blue line area).

Off site contributions:

There are number of established obligations to improve local off site PROW to allow for reasonable mitigation for the adverse impact on the PROW network of the Wider One Horton Heath development.

These are as set out in the 2022 HCS document submitted to EBC (applicant and LPA) for the '*Contributions for off-site improvements to the local PROW network for the OHH proposed development.*'

These relate to PROW or adjacent PROW to those affected by this proposed development. When considering Obligation CIL tests; the off-site impact of the OHH development proportionate to the population increase and therefore intensification of use of the local PROW network. As such, the contributions, are not directly related, nor fairly and reasonably related in scale and kind to this proposed development of the GI areas in itself – as the proposal does not generate any increase in use of PROW.

Therefore, the off-site obligations will be sought for all the residential development planning applications for the phases/residential areas of the OHH development.

These are the developments that impact on the PROW network and trigger the need for obligations.

Other legislative factors

In order to carry out work on the public highway, such as to the surface of PROW, permission under the Highways Act (1980) needs to be given by the Highways Authority. Therefore, to enable the developer to carry out the proposed development, a S106 legal agreement will be required as part of the any planning permission granted, that will secure the developer/land owner to enter into S278 highway agreement(s) to apply for permission to carry out works on the PROW. For each PROW works to be carried out, a commuted sum to cover the maintenance impact to the public for the maintenance of the PROW in perpetuity will be sought in the S106 legal agreement. This is to match the approach in the S106 for the first residential phase [FRP] planning permission F/20/89500.

The Local Planning Authority (LPA) can use Section 257 of the TCPA (1990) to grant the diversions proposed, should they be considered necessary for the development to occur. It should be strongly highlighted that following that process the LPA is required to notify the Highways Authority of the changes to the PROW network to allow the definitive map to be updated. However, the TCPA (1990) does not contain any legislation that allows for the LPA to authorise upgrades of PROW. Therefore, the developer/landowner will be required to apply to the Highways Authority for the re-dedication of the PROW for any and all proposed upgrades from Footpaths to Bridleways under the Highways Act (1990). Please follow this link for further information. It will be the obligation of the applicant to pay for the relevant application fees. [Public Path Orders | Hampshire County Council \(hants.gov.uk\)](https://hants.gov.uk/public-path-orders).

S106 legal agreement requirements

Any planning permission granted for this application will need to be subject to a S106 legal agreement that secures the following:

1. Upgrade of FPs 7, 10, 11, 701, 702 and 703 to bridleway at the expense of the developer – via PPO application to HCC definitive map team
2. Secure commitment to carry out works of a similar nature to the remaining lengths of FPs 7, 10, 11, 701, 702 and 703 on the wider OHH site to enable the dedication to Bridleways being certifiable.
3. Enter into S278 highways agreement(s) with HCC to gain permission to work on the surfaces of FPs 7, 10, 11, 701, 702 and 703.
4. Commuted sum of £1,074,600, to be secured in the S106.

Conclusion

In conclusion, this proposed development does not meet the principles of protection and enhancement of the PROW network as listed at the beginning of this response. In reference to paragraphs 6.27-6.29 of the submitted planning statement – we disagree, the scheme does not accord with policies DM1 and DM13 as it does not allow safe operation of the highway network (particularly for bridleway users) and does not protect or enhance the PROW network, and therefore also does not accord

to para 104 of the NPPF (2023). In particular, the proposed diversions proposed for the existing PROW are not enhancements, nor are they fit for purpose as bridleways as is proposed. The proposal for widespread enclosure along routes where none existed before is also not acceptable.

The principle of upgrading the existing PROW network to (mostly) bridleways and diverting them into green corridors is supported and agreed, in principle. However, the details presented here do not deliver this to the acceptability of the Highways Authority. It should be noted that planning permission in itself does not permit the diversion of PROW (this needs to be done under S257 or the highways Act, nor does it permit the applicant to carry out works on the PROW network (which requires entry into Highway Agreement(s) with the Highways Authority).

Therefore, Hampshire County Council Countryside Service, the Highways Authority in regards to the PROW network, **Object** to this planning application.

Should the LPA issue any planning permission, Hampshire County Council Countryside Service ask for it to be subject to a S106 legal agreement that secures the requirements for the applicant to deliver the upgrades to the PROW to bridleways via Public Path Orders to HCC, and to enter into S278 highway agreements with HCC to allow for them to carry out work on PROW, including management of construction, diversions, design standards and commuted sums. Under that circumstance, the Countryside Planning team would have to take advice on our ability to enter into highway agreements for works that do not protect the PROW network, as required by the Highways Act (1980).

Informatives:

1. Nothing connected with the development, or its future use, shall have an adverse effect on the Public Rights of Way, which must always remain available for safe public use at all times.
2. Should the developer identify the need to temporarily close or adjust a PROW, they should follow the guidance on the Hampshire County Council website. This includes further information on the duties as a land owner and/or developer, found at [Landowners guide to public rights of way | Hampshire County Council \(hants.gov.uk\)](https://www.hants.gov.uk/landowners-guide-to-public-rights-of-way/).
3. No vehicles (including builder's and contractor's), machinery, equipment, materials, spoil, scaffolding, or anything else associated with the works, use, or occupation of the development, shall be left on or near to a Public Right of Way as to cause obstruction, hindrance, or a hazard to the legitimate users. The public retain the right to use the public right of way at all times.
4. Granting of planning permission does not grant the applicant access rights to the site via the PROW network and separate consent is required.
5. All vehicles that would be legitimately accessing the site via a Public Right of Way should give way to public users, which could include horse-riders and

cyclists, at all times. In cases with legitimate vehicular access a Construction Traffic (or Environmental) Management Plan (CTMP) should be submitted to, and approved by, Hampshire Countryside Service as Highway Authority prior to any approval by the Planning Authority, and prior to commencement, to ensure the protection of biodiversity and public safety.

6. There must be no surface alterations to a Public Right of Way without the consent of Hampshire County Council as Highway Authority. Planning permission under the Town and County Planning Act (1990) does not provide this and separate consent is required. To carry out any such works without this permission would constitute an offence under Section 131 of the Highways Act (1980).
7. No works to the surface of the Public Right of Way shall be carried out without prior approval of the Area Countryside Access Manager. Any damage caused to the surface of the Public Right of Way by construction traffic will be required to be restored to the satisfaction of the Area Countryside Access Manager upon the completion of the build.

Yours sincerely,

Philip Millard MRTPI AIPROW BEng (Wales) MSc (UWE, Sal)

Countryside Planning and Development Control Manager

Countryside Planning

Hampshire Countryside Service

Hampshire County Council