

Mr John Coughlan, CBE
Chief Executive
Hampshire County Council
The Castle
WINCHESTER
Hampshire
SO23 8UJ

29 March 2018

Dear Mr Coughlan

OBSTRUCTION OF PUBLIC FOOTPATH NO.2 AT BOTLEY, HAMPSHIRE

I am writing as Chief Executive of the Ramblers about a matter which has been brought to my attention by our Hampshire area executive. It concerns the long-term unlawful obstruction of a public right of way — footpath no. 2 at Botley — by development. You will know that Hampshire County Council, as local highway authority, has a duty protect the public's right to use all highways, including footpaths and bridleways, and to prevent, as far as possible, their stopping-up.

I have been impressed by the Council's Countryside Services work over the past couple of years to reinstate 20 of the bridges missing from the Hampshire's rights of way network, so I hope that, by writing to you, we may be able to have the problem at Botley resolved without our resorting to legal remedies. We know that the local community are really pleased by the new bridge on Bishopstoke 780: our own local group, Eastleigh Ramblers, describe it as a "fine specimen". The bridge programme is clearly going down well. Elsewhere, Lockerley parish council have spoken of "our lovely new bridge over the river Dun." For our part we are much impressed by the potential longevity of these structures; anyone can see their value in encouraging people to benefit from the advantages of walking, improving their own health, the environment as they come to use their cars less, and the rural economy.

The issues with Botley footpath no. 2 are its long-term unlawful obstruction and the uncertainty about the proposed permanent alternative route. The legislation, echoed in Government guidance, requires the legal procedures for diverting a right of way to be complete before the existing way is obstructed. The Ramblers are not opposed to development, nor to the diversion of rights of way to facilitate it. We do however have the right to know at the time we are asked to agree a diversion that the promised diversion is in fact legally watertight and cannot fail to be implemented. We are happy to agree the route proposed in this case, but unless procedure is followed it cannot be guaranteed.

Procedures to divert a path are under way — a legal diversion is proposed here at Botley, with Eastleigh Borough Council having been approached about making an order under section 257 of the

Town and Country Planning Act 1990 — but, where the gun is jumped like this, there is no guarantee of that such diversions will be satisfactorily completed. As you will be aware, making an order is not the end of the process: it is only the formal beginning of it. The order proposed to be made here cannot take effect until after confirmation and subsequent certification that the new right of way has been satisfactorily created. So at present there is no right of way legally over the new route, which has not been constructed in any case. If such an order attracts objections — and many orders under section 257 do attract objections, some even by people who misguidedly think objecting will frustrate a development they oppose — Eastleigh Borough Council cannot confirm it. It then must be submitted to the Planning Inspectorate, and there is no guarantee that an Inspector will confirm it. If the Inspector were to reject the order, the agreed alternative line will not after all become a public right of way, and the existing one will remain, so that occupied houses will have a right of way passing through them with no guarantee of its being removed. The occupants could (in theory at any rate) be prosecuted as a consequence of the situation that Eastleigh Borough Council has allowed to come about.

The key to getting it right is for the diversion order to be made, advertised, and confirmed before any such development starts. We believe that, as the highway authority, Hampshire County Council should now take action to guarantee the status of the proposed route for Botley Footpath 2.

We also believe that as the highway authority, Hampshire should act in regard to the existing unlawful obstruction of the current right of way. We are told that the developer met your Council and an informal agreement was made allowing the developer to fence off a route through their site which involves the public using the areas set aside for footways adjacent to roads which would enable the construction of houses and a school to proceed along the line of the definitive path. If this is correct, there is no legal basis on which such an agreement can be made; it is not in the gift of the highway authority to acquiesce in an unlawful obstruction.

We would be grateful if you could ensure that the general issue of rights of way being affected by development is addressed effectively in future, not least as some 17,000 houses are planned between 2011 and 2036 for the Borough of Eastleigh alone.

I very much look forward to your response and hope we can resolve this matter speedily.

Yours sincerely



VANESSA GRIFFITHS
CHIEF EXECUTIVE