

Application No: 16/60001/PPDO Public Path Diversion Order

Site: Land At Creek Cottage, Lower Woodside, Lymington, SO41 8AJ

Proposal: Consultation on diversion of footpath Lymington and Pennington No 75 (part) and No 77 (part) Public Path Diversion Order

Applicant: Mr D Stevenson

Case Officer: Clare Ings

Parish: LYMINGTON AND PENNINGTON

1. REASON FOR COMMITTEE CONSIDERATION

To comply with the scheme of delegation

2. DEVELOPMENT PLAN DESIGNATION

No specific designation

3. PRINCIPAL DEVELOPMENT PLAN POLICIES

Not applicable

4. SUPPLEMENTARY PLANNING GUIDANCE

Not applicable

5. NATIONAL PLANNING POLICY FRAMEWORK

Not applicable

6. MEMBER COMMENTS

None received

7. PARISH COUNCIL COMMENTS

Lymington & Pennington Town Council: No comments received.

8. CONSULTEES

8.1 HCC Access Development Officer (Planning): Diversion as previously discussed.

8.2 Bournemouth & West Hants Water: There is apparatus in the area

which the contractors will need to be made aware of.

- 8.3 Southern Water Services: No objection.
- 8.4 SS Energy Power Distribution: No comments received.
- 8.5 Southern Water: No objection.
- 8.6 Auto Cycle Union, Wood Street: No comments received.
- 8.7 Byways and Bridleways Trust, PO Box 117: No comments received.
- 8.8 British Driving Society, 83 New Road: No comments received.
- 8.9 British Horse Society: No comments received.
- 8.10 The Secretary, British Horse Society: No comments received.
- 8.11 The Secretary, Cyclists Touring Club: No comments received.
- 8.12 Cyclists Touring Club (CTC): No comments received.
- 8.13 The Secretary, Open Spaces Society: No comments received.
- 8.14 Open Spaces Society: No comments received.
- 8.15 New Forest District Council - Development Control, Appletree Court: No comment.
- 8.16 Secretary, The Ramblers: No comments received.
- 8.17 The Ramblers: No comments received.
- 8.18 The Ramblers: Initial objection to reduction in width of footpath. Following negotiation, objection was withdrawn.
- 8.19 Mr Stevenson, CREEK COTTAGE:

9. REPRESENTATIONS

9.1 None received.

10. RELEVANT HISTORY

10.1 Realignment of footpath/track; access alterations; installation of estate fencing; reinforcement to bank (15/00632) - granted permission on 17 November 2015

11. ASSESSMENT

11.1 Full planning permission was granted for development at Creek Cottage by the Planning Development Control Committee on 17 November 2015. The approved application was for access alterations, the installation of estate fencing and the reinforcement to the bank at the head of Moses Creek. The application also involved the diversion of existing footpaths within the site.

11.2 A note was added to the permission confirming that a separate application relating to a Public Path Diversion Order would be required pursuant to Section 257 of the Town and Country Planning Act 1990 ("S.257").

11.3 S.257 permits the Authority to exercise its discretionary power to make such an Order for the diversion of a footpath which is necessary, in circumstances such as those relating to Creek Cottage, to enable development to be carried out in accordance with a planning permission. This development involves the erection of estate fencing across part of the existing footpaths Nos 75 and 77. This would obstruct the footpaths and therefore necessitates the stopping up of the footpath, extinguishment of the public rights of way and the creation of a replacement route for the footpath.

Procedure

11.4 There is a particular procedure to be followed in relation to the Order:

11.5 **Consultation:** the applicant's public rights of way consultant began a pre-consultation process with a draft Order in April 2016. No objections were received.

11.6 On receipt of that information, the Authority then made the Order on 24 September 2016, but this will not be affective until it has been confirmed.

11.7 On making the Order, the Authority:

- published a notice in the Lymington Times stating the general effect of the Order, that it has been made and is about be

submitted for confirmation or to be confirmed as an unopposed Order; specifying where the Order could be inspected free of charge and that copies of it could be obtained; and stating that any person could object to or make representations on the Order; to the Authority within a period of 28 days following the date of publication of the notice

- displayed a notice prominently at each end of the footpath, accompanied by a plan showing the general effect of the Order
- a copy of the Notice and Order were served on relevant Consultees
- made the Order available for inspection at the Town Hall

11.8 **Objection period:** this extended for 28 days following the publication of the Notice.

11.9 **Objections:** any objections were sent to the Authority, and then sent to the applicant, whose responsibility it was to try and resolve them. If there were unresolvable objections, the Authority could have decided not to proceed with the Order, and it would then have been for the Secretary of State to hold a local inquiry, and determine whether or not to confirm the Order with or without modifications.

11.10 **Confirmation:** where no objections have been received within the prescribed period (or those received have been withdrawn), and the Authority does not wish to modify the Order, so long as the applicant carries out works to the satisfaction of the Highways Authority, the Order may be confirmed (signed and dated) by the Authority.

11.11 **Advertise confirmation:** this should take place as soon as possible after confirmation, and the Authority should repeat step 11.7 above stating that the Order has now been confirmed. The Authority should send a copy of the Notice and confirmed Order to the applicant, Land Charges Department and Ordnance Survey.

11.12 **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.

Conclusion

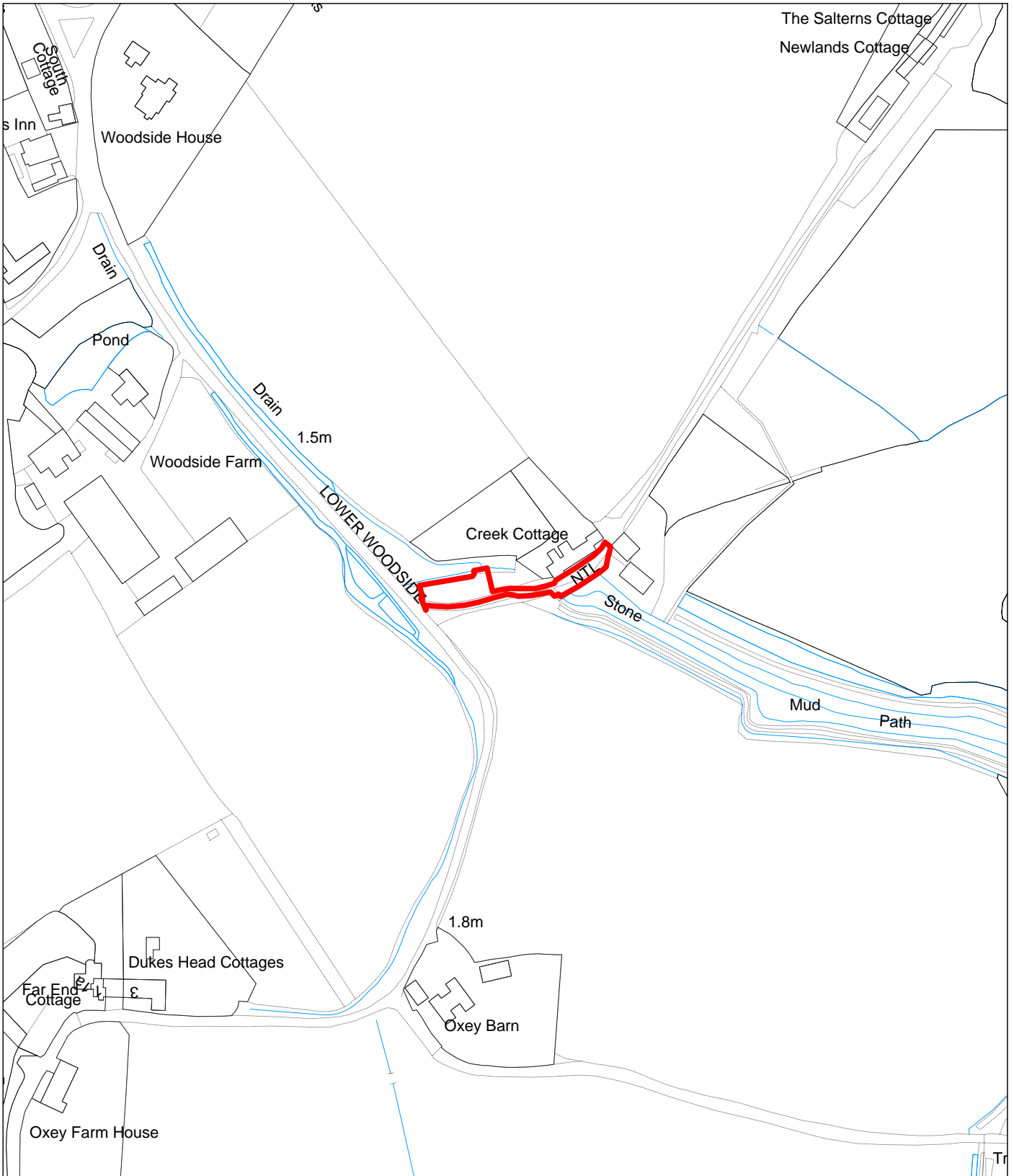
11.13 The Authority made the Order as set out above. One objection was originally received from the Ramblers, specifically to a reduction in width of the footpath, rather than the principle of relocating the footpath marginally to the south of the existing line. The objection was successfully negotiated away, particularly as the proposed route and width had been accepted by the Countryside Access Development Officer, as there was no reduction in the width. The Authority should therefore confirm the

Order, and proceed to advertise and notify the relevant parties of that confirmation.

12. RECOMMENDATION

Raise No Objection

- 1 The Authority should therefore confirm the Order, and proceed to advertise and notify the relevant parties of that confirmation.



NEW FOREST
NATIONAL PARK

New Forest National Park Authority
Lymington Town Hall, Avenue Road,
Lymington, SO41 9ZG

Tel: 01590 646600 Fax: 01590 646666

Date: 04/11/2015

Ref: 15/00632/FULL

Scale: 1:2500

© Crown copyright and database rights 2015 Ordnance Survey 1000114703

