

- Other Elected Members
- Cabinet Member
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)
- Chief Executive
- Legal I Marriott – comments incorporated
- Finance
- Other Chief Officers
- District Councils
- Health Authority
- Police
- Other Bodies/Individuals

FINAL DECISION **YES/NO** (*If 'No' complete Suggested Next Steps*)

SUGGESTED NEXT STEPS :

Details to be specified

- Further consideration by this Committee
- To Council
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Stratford on Avon Area Committee - 22nd June 2005

Part Diversion of Public Footpath SD313 Hampton Lucy

**Report of the Director of Planning, Transport and
Economic Strategy**

Recommendation

That the Warwickshire County Council (Part of Footpath SD313 Hampton Lucy) Public Path Diversion Order 2005 be forwarded to the Secretary of State for confirmation.

1. Location

- 1.1 The Parish of Hampton Lucy lies approximately 2 miles (3km) northeast of Stratford-upon-Avon, as shown on the plan attached as **Appendix A**.
- 1.2 Public Footpath SD313 connects the D6062 with the D6085 as shown on the plan attached as **Appendix B**.

2. Background

- 2.1 In October 2005 an application was submitted for the diversion of a section of Public Footpath SD313, as shown on the plan attached as **Appendix C**.
- 2.2 From Point A the definitive route of Public Footpath SD313 crosses a pasture field to the rear of the property known as The Thatched House, through a small woodland between Points C and D, across the corner of a second pasture field between Points D and E, and then joins a vehicular access track at Point F, as shown on **Appendix C**.
- 2.3 The proposed diversion will leave the definitive route at Point A and pass around the pasture fields and the small woodland by following the route from A – G – F and rejoin the definitive route as shown on **Appendix C**.
- 2.4 The applicants state that because the footpath passes close to the back of the house and garden it generates issues of security for their property and family.

3. Consultations

- 3.1 Consultations were made with Councillor Hobbs, the local County Councillor prior to the division boundary changes, Stratford on Avon District Council, Hampton Lucy Parish Council, the Hampton Lucy Parish Paths Partnership (P3) group, the Ramblers' Association (RA), the Open Spaces Society (OSS), and the statutory undertakers.
- 3.2 **Stratford on Avon District Council** - no objection to the proposal.
- 3.3 **Hampton Lucy Parish Council** - no objection.
- 3.4 **Hampton Lucy Parish Paths Partnership Group** – no comments received.
- 3.5 **The Ramblers' Association** - no objection.
- 3.6 **The Open Spaces Society** – no comments received.
- 3.7 **The Statutory Undertakers** - no objection.

4. Making the Order

- 4.1 A Public Path Diversion Order was made on 26th January 2005, and advertised in the Stratford Herald on 27th January 2005.
- 4.2 The Order received an objection from the Open Spaces Society on 2nd February 2005.

5. Details of the Objection

- 5.1 The Open Spaces Society objections are set out below.
 - 5.1.1 "The path would be substantially less convenient to the public in consequence of the diversion".
 - 5.1.2 "The diversion would have an adverse effect on public enjoyment of the path as a whole".

5.2 Response

- 5.2.1 Convenience to the public. Public Footpath SD313 runs for 290 metres from the D6062 to the D6085, as shown on **Appendix C** and as a whole Public Footpath SD313 is 1126 metres long. However, the County Council believes that neither of these distances is the appropriate measurement against which to assess the effect of the proposal.
- 5.2.2 The County Council does not consider that users walk between the two D-roads and no further, and it would therefore be unreasonable to assess the added distance of the proposal against the 290 metre length of footpath from the D6062 to the D6085. Nor does the County Council consider that users only walk on Public Footpath SD313 and no other footpath and therefore it would also be

unreasonable to assess the added distance against the 1126 metre total length of Public Footpath SD313. Indeed, Public Footpath SD313 cannot be used without also walking other footpaths and it is therefore unreasonable to simply consider its administrative length as a relevant assessment.

- 5.2.3 A more reasonable assessment would be to compare the added distance of 38 metres against the total distance needed to be walked on a realistic journey. Access to this footpath by car is limited by the absence of suitable parking, and apart from the 'car park' in Hampton Wood (which is only accessible to members of Warwickshire Wildlife Trust) there are no designated parking places nearby, and parking on road verges in the area is very limited. The nearest centres of population, the villages of Hampton Lucy and Sherbourne, are both approximately three kilometres from this section of SD313. This suggests that a circular walk from either village centre incorporating this section of SD313 will entail a journey of at least six kilometres (a walk from Stratford, Wellesbourne or Warwick will obviously be much further). Against this background the proposed increase of 38 metres is an increase of only 0.63 of 1% ($38 \div 6000 \times 100$) and is clearly not a substantial inconvenience in terms of distance.
- 5.2.4 Public Footpath SD313 does not connect to any other public services or amenities such as a library, school, bus stop, or shop except to another public highway. The relevant section of Public Footpath SD313 has no likely use other than as part of a recreational walk. The proposal is therefore not inconvenient in that respect.
- 5.2.5 The definitive route has a stile next to Point A whereas the proposed route will be stile-free. Therefore more people, particularly less-able walkers, will be able to use the proposed route than the definitive route.
- 5.2.6 The County Council remains satisfied that the proposal would not be substantially less convenient to the public.
- 5.3.1 Effect on public enjoyment. The proposal does not adversely affect the surface of the footpath. The natural surface of the proposed route is equally commodious to the natural surface of the definitive route. The proposed route does include a short section of a crushed stone track but this track only serves one residential property, such that it will only carry very light traffic, and is firm underfoot.
- 5.3.2 The proposed route crosses land in agricultural use as it does with the remainder of Public Footpath SD313 and with the majority of other paths in the area.
- 5.3.3 The long-distance views from the proposed route are at least as pleasant and interesting as those from the definitive route. While less of the house is in view the house and garden are unremarkable and in any case the view of them from the definitive route is also restricted.
- 5.3.4 The proposal does not adversely affect the character of the route and the County Council remains satisfied that the proposal would not have an adverse effect on public enjoyment of the path as a whole.

5.3.5 Hampton Lucy Parish Council was consulted over the proposal, and has been notified of the Order, but has resolved not to object to the Order. Stratford on Avon District Council was also consulted over the proposal, and has been notified of the Order, and the local District Councillor has no comments to make. The nearest residence is in the ownership of the applicants, and no local residents made representations to the County Council.

5.4 The Open Spaces Society were asked to reconsider their **objection** but confirmed their continued opposition to the Order in their letter dated 15th February 2005. It was therefore considered that a further attempt to seek the withdrawal of the Open Spaces Society objection would be unsuccessful.

6. Observations

6.1 Section 119 of the Highways Act 1980 details a number of tests that have to be met before a Public Path Diversion Order can be made or confirmed by the County Council or the Secretary of State. These are:-

6.1.1 In the interests of the owner of the land crossed by the footpath, it is expedient that the footpath should be diverted.

6.1.2 The new termination of the footpath should be substantially as convenient to the public.

6.1.3 The footpath will not be substantially less convenient to the public in consequence of the diversion.

6.1.4 The effect the diversion would have on public enjoyment of the footpath as a whole.

6.1.5 The effect the coming into operation of the order would have as respects other land served by the existing footpath.

6.1.6 The effect any new footpath created by the diversion order would have as respects the land over which the footpath is created and any land held with it.

6.2 The diversion is sought in the interests of the landowners. The applicants included the following statement in their application.

6.2.1 'Part of SD313 footpath comes very close to the back of our house and garden [and] it is sometimes difficult to know if people are using the footpaths to genuinely enjoy the countryside or for some other reason. Therefore, as it currently stands it poses a security problem for us. Our main concern, however, is for the safety of our three very young children. We want them to have the freedom to explore and play within the boundaries of our garden, but in the knowledge that it is as safe and secure as possible.'

6.2.2 It is a fact that the footpath passes through the small pasture field, in the applicants ownership, to the north of The Thatched House, and runs parallel to the field/garden boundary and past a pedestrian gate that is the applicants

private access between the field and the garden. This private access is virtually hidden from the residence by outbuildings and trees and the applicants have stated that it would be difficult for them to determine whether people on the footpath were lawful walkers or were using it for unlawful intent.

- 6.2.3 However, the proposed route passes around the outside of the small pasture field approximately 40m away from the current definitive footpath, and it is reasonable to agree with the applicants that they would be more content if the footpath were diverted as proposed.
- 6.2.4 The applicants initially applied to extinguish the footpath but were persuaded to apply for the diversion. They were content to do so even though this required them to secure the agreement of the neighbouring landowner (though the Council is not aware of the compensation arrangement between these parties).
- 6.2.5 The fact that the proposal is in the interests of the landowners has not been disputed.
- 6.3 The proposed diversion does not alter the termination points of the footpath and therefore the test in paragraph 6.1.2 does not apply.
- 6.4 The 'not substantially less convenient' test (paragraph 6.1.3) can be assessed under several criteria.
- 6.4.1 The existing footpath (A – B – C – D – E – F) is 166 metres. The proposed footpath (A – G – F) is 204 metres. The proposed footpath is therefore 38 metres longer. However, as stated in paragraphs 5.2.1 – 5.2.3, this difference does not render the diversion as substantially less convenient since the appropriate assessment of the effect of the added distance would be to compare the extra 38 metres to the distance likely to be walked when this section of SD313 is used as part of a recreational walk. The villages of Sherbourne to the north or Hampton Lucy to the south, being the closest centres of population, are both approximately three kilometres from Public Footpath SD313 suggesting that a circular walk from either village would require a walk of at least six kilometres. The extra 38 metres of the proposed footpath therefore represents an increase to the likely use of the relevant section of Public Footpath SD313 of at most 0.63 of 1%, and at an average walking speed of 3.2 kph (2mph) this represents an increase of only 43 seconds in a walk of nearly two hours.
- 6.4.2 The definitive route has one stile at Point B, and, while the route through the woodland between Points C and D and through the hedge at Point E is currently unavailable, there would be three further structures (stiles or gates) to negotiate. However, the proposed footpath has no limitations or structures other than the proposed 1.8 metres width as required by Warwickshire County Council public path diversion orders. In this respect it is reasonable to suggest that the proposed route would be used by more people, particularly the less-able, than would use the definitive route. A reduction in the number of stiles on public footpaths is in line with the County Council's working practice on boundary crossings.

- 6.4.3 There is no difference in the type of surfaces that the definitive footpath and the proposed footpath use. Both run on mostly natural surfaces except where they both make use of the surfaced vehicular track, and the only difference between them is that the proposed footpath runs on more of the track than the definitive footpath.
- 6.4.4 It is therefore considered that the footpath will not be substantially less convenient to the public in consequence of this diversion.
- 6.5 The 'effect the diversion would have on public enjoyment of the footpath as a whole' test (paragraph 6.1.4) can be assessed under several criteria.
- 6.5.1 Public Footpath SD313 is a totally rural footpath and mainly runs across land used in agricultural production. It follows both arable and pasture field edges from its junction with Public Footpath SD135c at Daisy Hill Farm to its junction with the D6085. Similarly, the proposed footpath will also run on an agricultural field edge and therefore the general character of the proposed footpath will be in keeping with the footpath as a whole.
- 6.5.2 The diverted footpath will pass around the small woodland rather than passing through it while providing adequate views into the woodland itself. With respect to the wider views of the surrounding countryside, the views from the proposed route, and particularly from that section of the track which is elevated, are equal if not superior to the views from the definitive route.
- 6.5.3 It is considered that the diversion would not have a significant effect on public enjoyment of the path as a whole.
- 6.6 The final tests (paragraphs 6.1.5 and 6.1.6) consider the effect on the land served by the existing public footpath and the effect the new footpath will have on the land over which it is created. As both of the landowners have agreed to this diversion they are aware of the effect it will have on the land over which both routes run. There is no significant effect.
- 6.7 Having considered all responses to the consultation and the published Order the Council is satisfied that the tests under Section 119 of the Highways Act 1980 are met.
- 6.8 On 7th March 2005 Mrs A Gordon, a local resident wrote to the Council suggesting that the footpath be re-directed along the D6085 since this would be more commodious. However, it was pointed out to Mrs Gordon that one public highway cannot be diverted onto another public highway since the result would be an extinguishment of rights and not a diversion of them. Furthermore, applications for extinguishment orders are not normally successful especially when the alternative route is a public road.
- 6.9 In their letter of 2nd February the Open Spaces Society claim that the statutory notices pertaining to the Order were not posted on site as required. However, notices of the making of the Order and Order plans were posted on site as required on 26th January 2005 but following the Open Spaces Society letter an inspection of the footpath was made on 4th February. This inspection confirmed

that both sets of notices were present but the post displaying one set had fallen over. This was then reinstalled. The notices were also inspected on their removal from site following the end of the 28 day period for representations and both sets were found to be in a satisfactory condition.

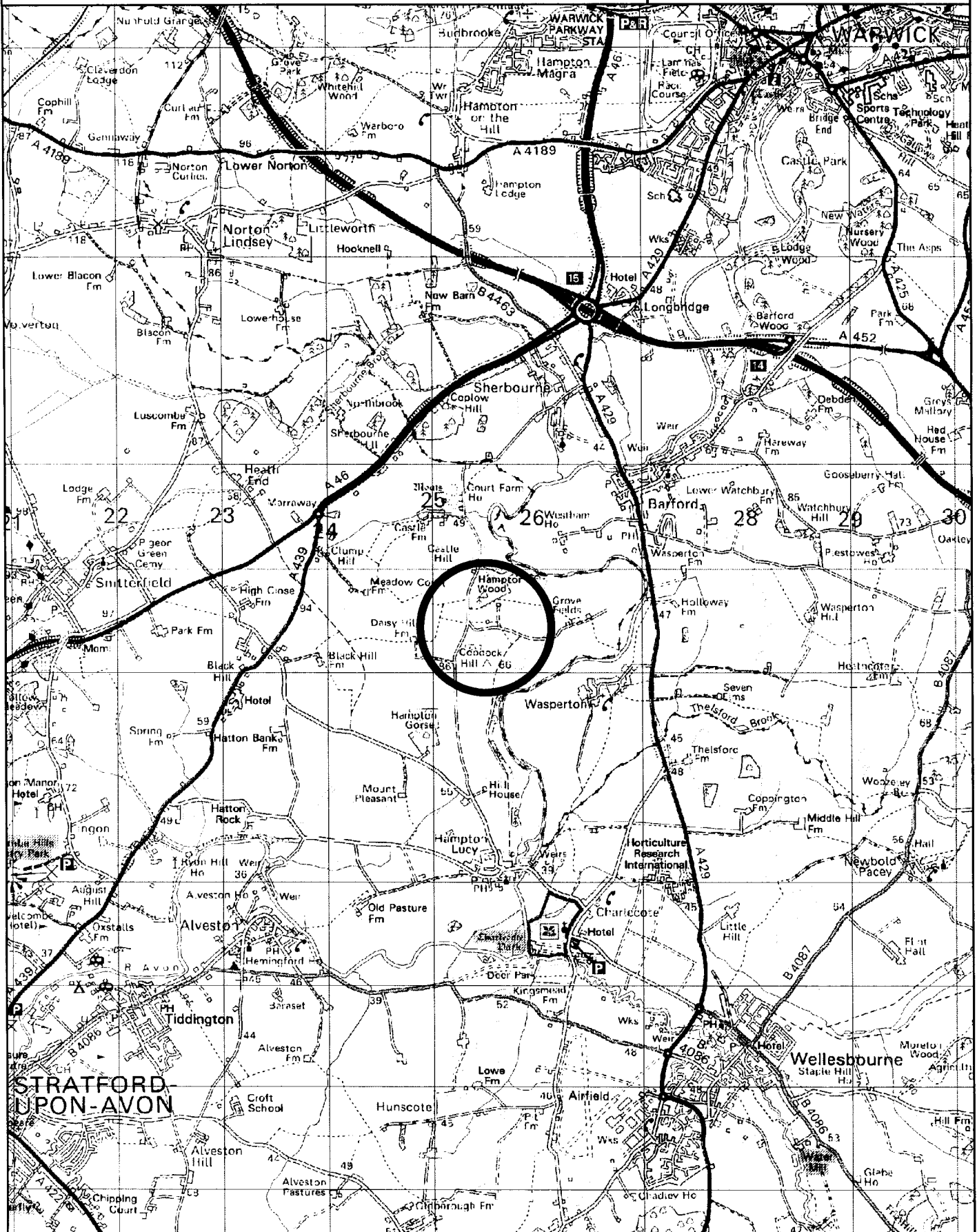
- 6.10 The definitive route of Public Footpath SD313 is currently unavailable to the public where it passes through the boundary fence of the small woodland at Points C and D, and through the field hedge at Point E. However, an alternative route passes through a gate close to Point C, diagonally across the pasture field to the east of The Thatched House, and through a field gate in the corner of the field adjacent to where the definitive route joins the D6085. This alternative route had been incorrectly waymarked as the definitive route, though it is not clear how or when. It is possible that it was mistakenly waymarked as the definitive route by members of the local Parish Paths Partnership group as it was the available route. The County Council does not condone the obstructions on the definitive route but, on the other hand, considers that the landowners have not benefited by offering the alternative route particularly as the applicants were not the landowners when the obstructions were created. The removal of the obstructions on the definitive route is not dependent upon the outcome of the diversion application but it is not unreasonable to suggest that since the alternative route provides an equally commodious path and the application appears to meet the tests of the legislation an appropriate way forward would be to seek removal if the application fails.

7. Environmental Implications

- 7.1.1 No Site of Special Scientific Interest or other nature conservation designation is affected by the proposal, and no objection has been made concerning adverse impacts of the proposal upon conservation of natural beauty or biological diversity. The County Council has no reason to conclude that the proposed diversion would have any adverse effect in these respects.
- 7.1.2 Public footpaths and bridleways are a valuable recreational resource. The proposed changes to this public footpath in Hampton Lucy will not have a negative effect for either the landowners or casual users.

JOHN DEEGAN
Director of Planning, Transport and Economic Strategy
Shire Hall
Warwick

7th June 2005



Site Location

Scale
1:50,000

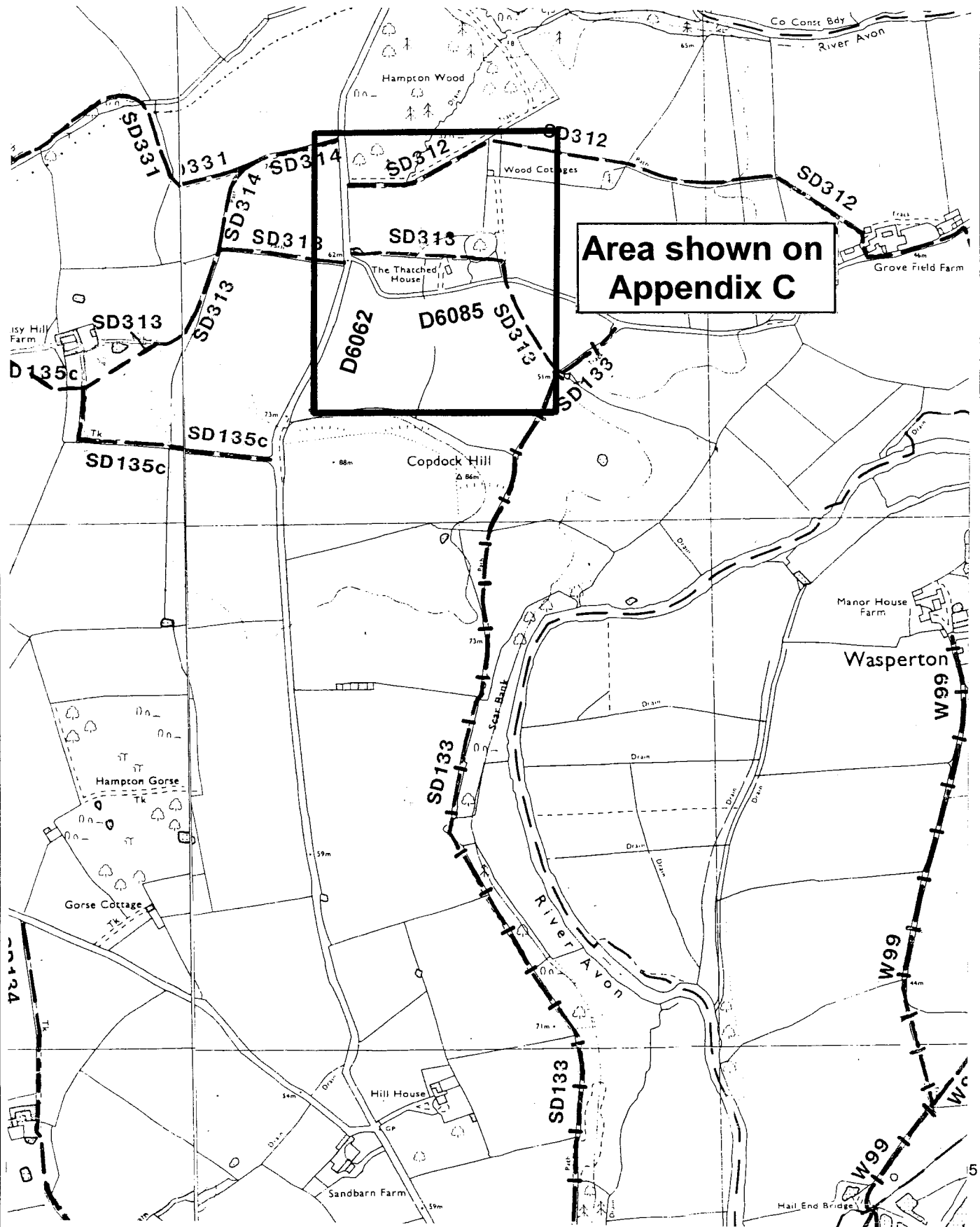


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Warwickshire
County Council

COUNTRYSIDE RECREATION



Area shown on
Appendix C

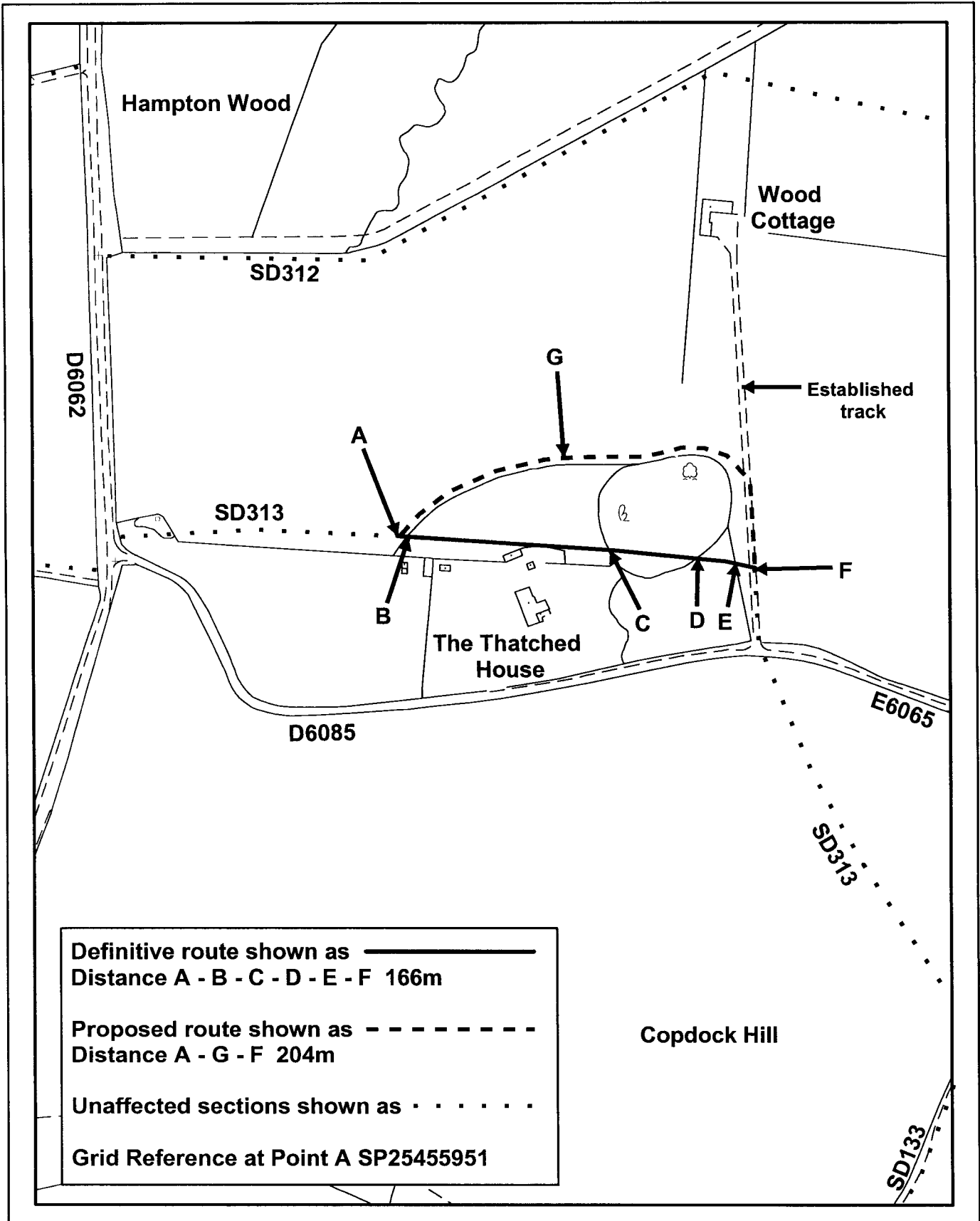
Extract of the
1998 Definitive Map

Scale
1:10,000



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**Proposed Diversion
Public Footpath SD313
Parish of Hampton Lucy
District of Stratford on Avon**

Scale 1:2,500

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