

Central Bedfordshire Council

Development Control Committee

11/11/2015

Determination of two applications to extinguish parts of Houghton Regis Footpaths Nos. 33 and 36

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Purpose of this report

1. To determine whether two applications which seek to extinguish parts of Houghton Regis Footpaths Nos. 33 and 36 should be approved and public path extinguishment orders made.
2. One application seeks to extinguish a parallel path and narrow a wide section of footpath. The other seeks to extinguish a footpath through Sewell Farm's yard and across a meadow and disused railway cutting.

RECOMMENDATIONS

The Committee is asked to:

1. **Approve the making of a public path order under Section 118 of the Highways Act 1980 to extinguish:**
 - a. **Those parts of Houghton Regis Footpath No. 33 which abut and adjoin the northern side of Sewell Lane between points A-E-C-B and C-D as delineated by the shading on the plan at Appendix A whilst retaining a 2 metre wide strip between points E-D.**
 - b. **That part of Houghton Regis Footpath No. 36 between points V-W as shown on the plan at Appendix A.**
4. **Refuse the application to make of a public path extinguishment order for the sections of Houghton Regis Footpath No. 36 between points W-X as shown on the plan at Appendix A on the grounds that this section of footpath is considered to be needed for public use.**
5. **Come to its own view on whether to approve or refuse the application to make a public path extinguishment order for the section of Houghton Regis Footpath No. 36 between points Y-Z through Sewell Farm as shown on the plan at Appendix A.**

Introduction

3. In September 2003 a resident in the hamlet of Sewell applied to the former Bedfordshire County Council for a definitive map modification order to add a public footpath from Sewell Lane northwards to connect to Houghton Regis Footpath No. 33. Following investigations by Council Officers, the former County Council made a definitive map modification order in 2005 to add the sections of footpath between A-C-E-B, C-D, V-W-X and Y-Z as shown on the plan at Appendix A. Following objections to both the order and to the subsequent modifications to the order, an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs confirmed the modified order in July 2012.
4. In October 2004 Mr. Alistair Moffitt of Orchard Cottage, Sewell Farm applied to have the proposed to be added sections of Footpath No. 36 between points V-W-X and Y-Z extinguished. In May 2008 a joint application was received from: Mr. Justin Gridley Esq. of Sundial Cottage, Mrs. Lorraine Gridley of Springwell Cottage and Mr. Hamish Kinmond and Ms. Liz McCaw both of Lane Farm to have the added parts of Footpath No. 33 between points A-C-B and C-D extinguished (see plan at appendix A). For purposes of practicality, cost and administration both of these applications have been processed together with the costs being proportionately divided between the various parties.

Description of Footpaths to be extinguished

5. Houghton Regis Footpath No. 33 at Sewell Lane is unusual in that rather than being a linear feature it is an irregular area consisting of a driveway (B-C), a narrow access to a cottage (A-E) and an area of steep banks and landscaping through which a driveway has recently been constructed (C-D). This area is best described by the shading on the plan at Appendix A. The section of footpath proposed to be retained (E-D) would rest on a 2 metre wide grassed terrace with revetment work on its eastern downslope side.
6. Houghton Regis Footpath No. 33 at Sewell runs across an old railway cutting which has an almost vertical southern face (V-W) and gently sloping northern face. The Sewell Greenway cycle route between Houghton Regis and Stanbridge runs through the cutting. Footpath No. 36 continues north-westwards downhill over a small pasture to Sewell Lane (W-X) and then runs through the yard of Sewell Farm before continuing downhill in a north-westwards and then northwards direction to connect to an unaffected part of Footpath No. 33 (Y-Z).

Legal and Policy Considerations

7. Section 118 of the Highways Act 1980 (“the 1980 Act”) empowers the Council, as Highway Authority, to make and confirm an order to extinguish a public footpath subject to it meeting a number of legislative tests. These are set out and discussed in detail in Appendix B and summarised below.

Considerations for making a public path extinguishment order

8. The Council can **make** a public path extinguishment order if it is expedient to do so on the ground that it is not needed for public use. In considering whether the extinguishment is expedient the Development Management Committee (hereafter “*the Committee*”) can consider a variety of ancillary matters – such as privacy, security, and health and safety. However, these matters are subordinate to the primary test of whether the footpath is needed for public use.
9. The table below summarises the findings detailed in Appendix B

<i>S.118(1) – whether it is expedient that the footpath should be stopped up on the ground that it is not needed for public use</i>		
Path section	Meets test?	Comments
Footpath No. 33		
A-C	Yes ✓	Runs next to cottage and is obstructed. Walkers can use Sewell Lane.
C-B	Yes ✓	Runs along driveway and then up a steep bank. Walkers can use Sewell Lane.
C-D	Yes ✓	Very wide - runs along a driveway and includes the land to either side including a steep bank. Part of width between points E-D retained for public use.
Footpath No. 36		
V-W	Yes ✓	Runs down the side of a near-vertical railway cutting. Alternative route via Bridleway No. 35
W-X	No ✗	Runs over a pasture between railway cutting (Sewell Greenway cycle route) and Sewell Lane. Would provide a direct link to the Greenway
Y-Z	Yes ✓	Runs from Sewell Lane through the farmyard of Sewell Farm to Footpath No. 36. Footpath No. 33 provides a suitable alternative route.

10. Consequently it is expedient to **make an order** to extinguish the sections of footpath between points A-C-B, C D, Y-Z and V-W on the ground that these sections are not needed for public use. The section of Footpath No. 33 between points D-E and the section of Footpath No. 36 between points W-X should be retained as this is considered needed for public use.

Considerations for confirming a public path extinguishment order

11. Before **confirming** a public path extinguishment order the Council must be satisfied that it is expedient to do so having regard to the extent that the footpath would be used by the public if not extinguished and the effect of the extinguishment on the lands served by the path. In considering whether the public would use a path, any temporary circumstance diminishing or preventing public use must be disregarded.
12. The table below summarises the findings detailed in Appendix B

<i>S.118(2) – the council shall not confirm a public path extinguishment order unless satisfied that it is expedient to do so having regard to the extent that the footpath would be likely to be used by the public if retained</i>		
Path section	Meets test?	Comments
Footpath No. 33		
A-C	Yes ✓	Walkers use Sewell Lane to avoid passing past cottage windows.
C-B	Yes ✓	Walkers use Sewell Lane to avoid climbing steep bank.
C-D	Yes ✓	Walkers use the retained width (E-D) in preference to the lower section along driveway.
Footpath No. 36		
V-W	Yes ✓	Walkers can use easier route via Bridleway No. 35
W-X	No ✗	Walkers can get pleasant views from the footpath and would use it to go from the Greenway to Sewell Lane
Y-Z	No ✗	Walkers are likely to use this route as a scenic alternative to Footpath No. 33. The level of public use cannot be ascertained as it is obstructed by a locked gate.

13. Consequently it is expedient to **confirm an order** to extinguish sections A-C-B, C-D, and V-W on the ground that these sections of footpath are unlikely to be used to a significant extent were they open and available for public use and not extinguished. However I consider that the sections of Footpath No. 36 running through Sewell Farm between points Y-Z and points W-X to the south are likely to be used if retained. Consequently an order extinguishing these sections could not be confirmed and therefore an extinguishment order ought not to be made.

Other considerations

14. A number of other considerations ancillary to the main legislative tests are considered in Appendix B. None of these have any great impact on the conclusions above although it should be noted that the most of the paths applied to be extinguished lie within an Archaeological Notification Area. Whilst not directly affecting any extinguishment it does have some bearing on how any non-extinguished sections of footpath are reinstated.

Consultation responses

15. The proposed extinguishment of several sections of Houghton Regis Footpaths Nos. 33 and 36 have been consulted on and the responses from various consultees are included at Appendix C and briefly summarised below.
16. The various applicants: Mr. Gridley Esq. Mrs. Gridley, Mr. Kinmond and Ms. McCaw and Mr. Alistair Moffitt are were consulted. All the applicants are supportive of the extinguishments they have applied for.
17. Mr. Moffitt has also submitted further representations in support of his application which, as discussed above, is not considered to meet the legislative tests for the making or confirmation of a public path extinguishment order. Mr. Moffitt's representations focus mainly on issues of farmyard security, safety of walkers crossing a working farmyard, family privacy, welfare and security issues, and the presence of Footpath No. 33 as a nearby alternative route and are included at Appendix C. Comments on the points Mr. Moffitt makes are also included.
18. Mr. Andrew Selous MP has written to the Council on behalf of Mr. Moffitt. Mr. Selous' inquiries relate principally to the issues of security of Mr. Moffitt's farm equipment and the health and safety of walkers. Mr. Selous' inquiries, Mr. Moffitt's e-mails to the MP, and the Council's responses are included separately at Appendix D.
19. Houghton Regis Town Council and the Ramblers both currently support the proposed extinguishments of all the paths applied for. However The Chiltern Society has stated that it opposes the extinguishment of the section of Footpath No. 36 between points X-W and potentially may also oppose the extinguishment of the section through the farmyard (Y-Z) (see Appendix C).
20. Sustrans, the County Archaeological Officer and Statutory Undertakers were also consulted and their responses are included at Appendix C.

Options for consideration

21. The recommendations invite the Committee to come to its own view on whether an order should be made to extinguish the section of Footpath No. 36 between points Y-Z through the yard of Sewell Farm.

22. The presence of an alternative route (Footpath No. 33) means that this section of Footpath No. 36 can be considered not needed for public use. However the pleasant views, visual interest of the farm building and farm yard means that this route would be likely to be used by walkers if it was opened up and signed. As this section of Footpath No. 36 is neither signed nor available for public use I cannot provide an actual level of public use but experience leads me to conclude that it would be used if it was made available. The Committee has to have *“regard to the extent that the footpath would be used”* in considering whether to extinguish the footpath which is a relatively subjective test of the Act.
23. Mr. Moffitt has been keen to stress a variety of issues which are ancillary to the above – including danger to walkers from farm vehicles, possible thefts and the implications on the cost of farm insurance, family privacy and welfare issues. These subordinate issues have been addressed elsewhere in the report and at Appendix B and can be included in the Committee’s consideration of whether it is expedient to make an order if the primary tests of *“not needed for public use”* and *“whether the path would be used by the public if not extinguished”* have been met.
24. The Committee can therefore:
- A. Have regard to the potential use of the route with a view that this overrides any potential hazard to users or impact on the owners and inhabitants of Sewell farm and **refuse** this part of Mr. Moffitt’s application and retain the footpath between points Y - Z, or
 - B. Consider that the issues of public safety and Mr. Moffitt’s family’s security and business interests outweigh the extent to which members of the public are likely to exercise their right to walk the footpath through the farmyard between points Y - Z and that it is therefore expedient to **approve** his application for an order to extinguish this section of footpath.
 - C. The option of doing nothing is **not an option** as currently Mr. Moffitt is guilty of obstructing a public highway and not taking enforcement action lays the Central Bedfordshire Council open to action before the Magistrates’ Court under Section 130B of the 1980 Act.

Reasons for decision

25. The Legal and Policy Section above discusses whether the two applications meet the required tests of Section 118 of the 1980 Act.
26. This report considers that the proposed extinguishment of several sections of Footpath No. 33 does meet the legislative tests and consequently an order could be made if the Committee considers it expedient to do so.

27. Of the three affected sections of Footpath No. 36, section V-W is unlikely to be needed or used by the public and thus meets the legislative tests and consequently an order could be made if the Committee considers it expedient to do so.
28. The section of Footpath No. 36 between points W-X is considered to be needed for public use and would be used if made available to the public. This section does not meet the legislative tests and an order to extinguish this section could not be made.
29. The section of Footpath No. 36 between points Y-Z is considered to be not needed for public use. However this section of path is potentially a desirable and scenic alternative to the nearby Footpath No. 33 and therefore is likely to be used by the public if made available to them. Consequently an order to extinguish this section may not meet the confirmation test of Section 118. However, in considering whether it is expedient to confirm an extinguishment order the Committee can consider the issues included in Mr. Moffitt's representations at Appendix C and resolve to adopt one of the options at Paragraph 24 above.

Council Priorities

30. The proposal reflects the following Council priorities:
 - Enhancing your local community
 - Promote health and wellbeing and protecting the vulnerable.
 - Better infrastructure – improved roads, broadband reach and transport.
 - Great universal services – bins, leisure and libraries.
31. The proposal, if parts of Footpath No. 36 are retained, will provide a balance between public access from Sewell Lane northwards towards the A507 and southwards towards the Sewell Green Lane with increased privacy and security for properties situated alongside Sewell Lane.

Legal Implications

32. Section 118 of the Highways Act 1980 empowers the Council to make a legal order to extinguish a public right of way if it considers it expedient to do so on the ground that it is not needed for public use and is unlikely to be used were it not extinguished. The proposal by approving parts of the submitted applications but not others meets the legislative tests of the 1980 Act. As the proposal is currently opposed it is likely that any public path extinguishment order would receive objections and would need to be forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation. It is likely the objections would be dealt with by written representations rather than a public inquiry.

33. Section 28 of the Highways Act 1980 gives any land owner or person with a legal interest in the land the right to claim compensation from the Council upon the coming into operation of a confirmed public path order. However the applicants - the landowners - have signed declarations that they would defray any compensation and thus in effect not claim any. Moreover, no compensation would be payable for not extinguishing part of a footpath added by a definitive map modification order.

Financial Implications

34. The Council's administrative and advertising costs for the making and confirmation of the proposed order are being paid for by the various applicants. How the joint applicants arrange to reimburse the principal contact who will be invoiced is a private matter between themselves. The Council's administrative costs are estimated to be £1500 and the advertising costs about £500. The charges will be applied in two tranches, one after the order is made and one after the order is confirmed. If members refuse the majority of the application by Mr. Moffitt the Council cannot charge for any administration costs incurred in dealing with that aspect of his application and so will bear those costs itself; otherwise, if his application is approved, he will be charged for administration and the costs of any order making. The part of Mr. Moffitt's application which is recommended for approval (V-W) is in the Council's interest rather than in the applicant's and so that cost will also be born by the Council from existing Rights of Way Team budgets. Depending on the Committee's resolution, it is proposed that separate orders be made for both footpaths so that any objection by the Chiltern Society to the extinguishment of parts of Footpath No. 36 does not prejudice the confirmation of the extinguishment of parts of Footpath No. 33. Administrative and advertising costs to be borne by the Council are estimated to be about 25% of the total cost – about £500.
35. The Council's administrative costs are being charged at the rate that was in force (£19/hr) when the applications were accepted as duly made in October 2004 and June 2008. Consequently the current 2015/16 minimum fee of £2040 is not applicable to these applications.
36. Currently there is opposition to the proposal and so it is likely that additional unrecoverable Council expenditure will be incurred in dealing with objections to an opposed order. This additional unrecoverable expenditure would include forwarding the order to the Secretary of State for Environment, Food and Rural Affairs for confirmation and would potentially cost £1000 which would be met out of the existing Rights of Way Team's budget.
37. Extensive works are required to install sleeper revetments which will be backfilled to raise and level the retained section of Footpath No. 33. These will be carried out by and at the expense of the applicant Mr. Gridley. Additional works – mainly clearance, signposting, installation of kissing gates and the construction of steps, would be

required on the section of Footpath No. 36 to the south of Sewell Lane (W-X) which is proposed to be retained. These works (excluding the kissing gates which are the landowner's responsibility) are estimated to cost £2000 and are part of the Council's duty to maintain highways and will be funded out of existing Rights of Way Team budgets.

Equalities Implications

38. The proposal would not discriminate against any particular group of local residents. If the proposal succeeds then local residents and walkers would be able to enjoy a comparatively flat grassed route (C-D) going northwards from Sewell Lane compared to the existing route which climbs a steep bank. Likewise the section of Footpath No. 36 heading northwards from Sewell Lane through the farmyard ((Y-Z) is a generally gently sloping path which is easy to use. The section of footpath to be retained to the south of Sewell Lane (W-X) requires opening up and steps or a ramp installed down the bank into the railway cutting and Sewell Green Way. There is though a slightly longer but metalled alternative route to avoid any steps if installed.

Community Safety

39. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report. The proposed extinguishment of parts of Footpaths Nos. 33 would remove the current footpaths from the principal access to Springwell Cottage and Lane Farm. The report does not support the extinguishment of part of Footpath No. 36 which runs through the farmyard of Sewell Farm where there is an increased chance of pedestrian-vehicle conflicts. However it is the duty of Mr. Moffitt as the farmer to ensure that he implements safe working practices to avoid endangering member of the public using the public footpath through his farmyard. By opening up Footpath No. 36 through the farmyard there may be an increase in risk of opportunistic theft from an area where thefts have occurred previously when public access was restricted.

Conclusions

40. Following the addition of several sections of Houghton Regis Footpaths Nos. 33 and 36 to the Definitive Map and Statement in 2012 two applications by neighbouring applicants seek to extinguish most of the sections of footpaths added by the earlier 2005 modification order.
41. One application seeks to extinguish sections of Footpath No. 33 which are either duplicated by the adjacent Sewell Lane – a very quiet dead-end road, or are where the footpath is recorded with a width far in excess of 2 metres and it is proposed to narrow this to a retained 2 metre wide strip along a revetmented terrace alongside Sundial

Cottage. The requested extinguishments are considered to meet the legislative tests of Section 118 of the 1980 Act.

42. The other application seeks to extinguish sections of Footpath No. 36 which run northwards from Sewell Lane through Sewell Farm and a meadow to connect with Footpath No. 33 or southwards from Sewell Lane over a meadow and across the deep railway cutting of the Sewell Greenway to connect with Bridleway No. 35 to the south. With the exception of a short section of footpath up the southern side of the railway cutting (section V-W), the requested extinguishments are considered to either not meet the making test of “not needed for public use” (section W-X) or the confirmation test of “would be used by the public apart from the order” (sections X-Y and Y-Z).

Next Steps

43. The sections of Footpath No. 36 between points W-X and Y-Z currently are not signposted or made open and available to the public. Depending on the resolution of the Committee and consequent success/failure of any orders, work will have to be done to signpost these sections and install steps across part of a County Wildlife Site and an Archaeological Notifiable Area. If Mr. Moffitt’s application is refused he will have to either unlock his main gate or provide a smaller unlocked hand-gate or kissing-gate to the side for use by walkers otherwise enforcement action would need to be taken to make the route available.
44. If members approve the making of separate extinguishment orders for Footpaths Nos. 33 and No. 36 these will need to be made and advertised on site and in the local press with copies being served on land owners and occupiers and statutory consultees. If no objections are received to the orders by the end of the five week objection period the Council can confirm the orders.
45. However, if objections are received and not withdrawn the opposed order(s) will need to be forwarded to the Planning Inspectorate for an independent Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs to consider the order(s) and to confirm/not confirm them as they consider appropriate having regard to the confirmation test of whether the public would use the footpaths if available and not extinguished.

Appendices

Appendix A – Plan showing footpaths

Appendix B – Legal and policy considerations

Appendix C – Consultation responses (including Mr. Moffitt’s representation)

Appendix D – E-mails from Andrew Selous MP and CBC responses

Background Papers

None.