

Timeline of Events for Maulden Footpath No. 28

1. In December 1989 Mr. Alan Bowers purchased a plot of land on the northern side of Clophill Road, Maulden. In June 1992 he fenced off the land and locked the access gate.
2. In October 1992 Mrs. Hilda Izzard, Mr. Bowers' neighbour and the niece of the pre-1946 owner of the land in question, applied to the former County Council for a modification order to add a public footpath to the Definitive Map based on historic public use of the route.
3. In October 1993 Mr. Bowers bought a plot of land adjacent to Clophill Road which subsequently became 123b Clophill Road.

1995 Modification Order

4. In September 1995 the former County Council made a modification order to add a footpath to the Definitive Map. By this time, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the original line of the footpath. Mr. Bowers objected to the modification order which was subsequently heard by an independent Inspector using a process based on exchanges of correspondence.
5. The 1995 modification order was confirmed in August 1997 – by which time Mr. Bowers had almost finished building his new house. Some of Mr. Bowers' new house obstructed the recorded legal line of Footpath No. 28. The detailed conclusions of the Inspector appointed by the Secretary of State for the Environment are shown at Appendix 3A. These showed that there had been sufficient use by the public during two distinct periods: 1936-56 and 1972-92, to enable the former County Council to deem that a public right of way on foot had been dedicated along the route of Footpath No. 28.

1998 Extinguishment Order

6. Mr. Bowers consequently applied to the former Mid-Beds District Council for a diversion of Footpath No. 28 under the Town and Country Planning Act 1990 ("the 1990 Act") onto the adjacent Bridleway No. 24. This was refused by the District Council in February 1996, primarily as the outcome of the 1995 modification order was still unknown. In November 1997 Mr. Bowers applied to the District Council for the extinguishment of Footpath No. 28 under the 1990 Act. The District Council made an extinguishment order in March 1998 which received a number of objections, including from the former County Council's Rights of Way Officer for Maulden. Following a public inquiry, the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions determined in May 1999 that the order should not be confirmed. The detailed conclusions of the Inspector are shown at Appendix 3B and showed that: the order would result in the retention of a valueless dead end path; the footpath as a link between Clophill Road and Maulden Woods was important; and that Bridleway No. 24 was not a suitable alternative due to its level of private vehicular use.

First prosecution of Mr. Bowers

7. In January 2000 the former County Council successfully prosecuted Mr. Bowers for wilful obstruction of Footpath No. 28 by the construction of wing-walls to the side of his front gates.

2000 Extinguishment Order

8. In June 2000 Mr. Bowers applied again to Mid-Beds District Council, this time for a public path extinguishment order under Section 118 of the Highways Act 1980. An extinguishment order was made by the District Council in September 2000 which received several objections. Following another public inquiry, the Inspector appointed by the Secretary of State for the Environment, Transport and the Regions determined in August 2001 that the order should not be confirmed. The detailed conclusions of the Inspector are shown at Appendix 3C and showed that the Inspector considered that the footpath would be used to a significant extent if not extinguished.

2004 Diversion Order

9. As Footpath No. 28 was still obstructed by Mr. Bowers' house, No. 123b Clophill Road, the former County Council took it upon itself to make a public path diversion order under Section 119 of the Highways Act 1980 to take the footpath out of the house and to place it along the western property boundary. The order was made in July 2004 and was objected to by Mr. Bowers and 160 others using a proforma letter.
10. In September 2004 Mr. Bowers applied to the former County Council to have Footpath No. 28 extinguished under both Sections 116 and 118 of the Highways Act 1980. The former County Council refused to process these applications until the active 2004 diversion order had been determined by the Secretary of State.
11. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs confirmed the 2004 diversion order in June 2006. The detailed conclusions of the Inspector are shown at Appendix 3D and showed that the Inspector considered that it was expedient to confirm the order in the interest of Mr. Bowers.
12. Following the demolition of a brick storage building adjacent to Clophill Road, Central Bedfordshire Council made an order in 2010 to vary the route of the diverted footpath so that it followed a straight line alongside Mr. Bowers' western property boundary. The variation order was confirmed as an unopposed order.

Second court appearance of Mr. Bowers

13. In November 2007 the former County Council prosecuted Mr. Bowers in the Magistrates' Court for not opening up the diverted line of Footpath No. 28. This resulted in a court order for removal of the obstructions being issued.
14. In October 2008 Mr. Bowers' agent applied on his behalf for a definitive map modification order to delete the footpath on the ground that it was recorded in error. Neither the agent nor Mr. Bowers submitted any evidence to support the

application until March 2009 shortly before Mr. Bowers' next court appearance.

Third court appearance of Mr. Bowers

15. Central Bedfordshire Council, as the successor authority, prosecuted Mr. Bowers in the Magistrates' Court in April 2009 for non-compliance with the 2007 court order and won its case. Mr. Bowers was compelled to open up the legal line of the footpath.
16. In his summing up at the 30 April 2009 Magistrates' Court, Smith D.J. stated (as recorded verbatim by the former Council's Head of Archives and Countryside Access):

*The County (and District) Councils' Members and Officers had 'sympathised with Mr. Bowers' predicament and sought compromise', 'exercised discretion' and 'looked at options to help'. The Council as a corporate body had 'acted in good faith' and was consistently 'sympathetic' but, **in the context of the legal and technical advice and the Inspectors' decisions, an extinguishment 'would not happen'. Mr. Bowers had no grounds to act to compel the Council as it was clear that the Order could not succeed in law (there was 'no prospect of success') and it was 'unreasonable' to expect the Council to back an 'extinguishment'**. (emphasis added)*

The 2013 Development Management Committee

17. Mr. Bowers' applications for:
 - A. A modification order to delete the footpath (S.53 Wildlife and Countryside Act 1981),
 - B. A public path extinguishment order (S.118 Highways Act 1980) and
 - C. An application to the Magistrates' Court for a stopping up order (S.116 Highways Act 1980)

were heard by the Council's Development Management Committee ("the Committee") in February 2013. The Senior Definitive Map Officer's recommendations were that all three applications be refused as they either did not meet the legislative tests of the relevant Acts or were contrary to Council policy.

18. The February 2013 sitting of the Committee resolved the following:
 - A. That Mr. Bowers' application to delete the footpath under Section 53 of the Wildlife and Countryside Act 1981 should be refused as there was no new substantive and cogent evidence had been discovered which demonstrated that a valid non-intention to dedicate existed during the period 1936-56
 - B. That a public path extinguishment order should be made under Section 118 of the Highways Act 1980 on the grounds that the footpath is no longer needed.

- C. That an application to the Magistrates' Court under Section 116 of the 1980 Act ought to be made for a stopping up order on the grounds that:
- The application meets the Council's policy.
 - Bridleway No. 24 is close enough to be used as an alternative route

The approved Minutes of the Committee are shown at Appendix 3E.

Modern timeline – Application and appeal to delete Footpath No. 28

19. In April 2013 Mr. Bowers appealed under Schedule 14 of the 1981 Act to the Secretary of State for Environment, Food and Rural Affairs against the Committee's refusal to make a modification order to delete Footpath No. 28. This transferred jurisdiction of the application from Central Bedfordshire Council as the Surveying Authority to the Secretary of State.
20. In September 2013 an Inspector appointed by the Secretary of State refused Mr. Bowers appeal on the grounds that the evidence discovered (i.e. submitted by Mr. Bowers) "*...was not of such substance as to displace the presumption that the Definitive Map and Statement are correct...*" and "*...that there is no cogent [compelling] evidence of the occurrence of an error when the [footpath] was originally added to the Definitive Map...*" The detailed reasons of the Inspector are shown at Appendix 3F.
21. Mr. Bowers applied for Judicial Review of the Secretary of State's refusal. This coincided with Defra changing its policy on not allowing new evidence that had not previously been considered by the Surveying Authority to be submitted as part of an appeal. In April 2014 Defra agreed to a High Court order quashing the Secretary of State's refusal on the ground that the Secretary of State had refused to consider evidence not previously considered by the Committee. No comment was made by the Court on either the veracity of Mr. Bowers' evidence or whether the Definitive Map and Statement was correct or not.
22. Mr. Bowers requested that his Schedule 14 appeal be heard publicly by an Inspector at a non-statutory inquiry. This was originally scheduled for January 2015 but this did not take place until 15-16 September 2015 due to lack of an Inspector. Mr. Bowers did not supply any new evidence that related to the use of the footpath by the public during the relevant periods (1936-56 and 1972-92). At the public inquiry the Inspector would not allow Mr. Bowers to air his views on alleged Council and Officer corruption or to discuss Council procedures and the decisions that took place after the original 1995 modification order had been made as these were not relevant to the purpose of the inquiry. The Inspector concluded that "*...the new evidence [submitted by Mr. Bowers] considered together with all the existing relevant evidence, is not cogent and falls far short of displacing the presumption that the Definitive Map is correct in depicting Footpath No. 28...*" Mr. Bowers' appeal was therefore refused; the detailed reasons of the Inspector are shown at Appendix 3G.
23. Mr. Bowers applied to the High Court of Justice on 22 December 2015 to have the Secretary of State's refusal decision judicially reviewed. On

21 January 2016 Lang J. refused the application on two procedural grounds and on the merit of the case, stating:

...the Claimant has failed to establish any error of law on the part of the Inspector in reaching his decision. The Claimant plainly disagrees with the Inspector's conclusions on the evidence, but this is not a sufficient basis to quash a decision. The grounds upon procedural irregularities, bias, bad faith, and a failure to have regard to the evidence are unarguable in my view...
(see Appendix 3J)

24. Mr. Bowers did not apply to have Lang J.'s refusal of his application reconsidered in open court (an "oral renewal") by the stipulated deadline and the case was closed. However, following a further appeal by Mr. Bowers on the ground that his solicitor was never served with the original refusal notice, Lang J. granted an extension to the deadline for oral renewal. Lang J. also confirmed that, whilst the reasons for failing on procedural grounds were incorrect and could be disregarded, Mr. Bowers' application still failed on the merits reason (see Appendix 3J). Mr. Bowers did not apply for an oral renewal by the new 26 May deadline and the case was again closed.

Modern timeline – 2013 public path extinguishment order

25. Central Bedfordshire Council made an order under Section 118 of the Highways Act 1980 to extinguish Footpath No. 28 in May 2013. This received a small number of objections. The order was forwarded to the Planning Inspectorate in October 2013 and was subsequently heard by an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs in June 2014. The Inspector concluded that, whilst the arguments for and against the order were finely balanced, it was not expedient to confirm the extinguishment order. The Inspector noted that:
- Public use was regular and at levels that were not insignificant but there was no local demand for the route to be retained
 - The footpath does not facilitate crime or present significant security issues.
 - The current access to Clophill Road is not unsafe and no traffic issues have been identified.
 - Whilst the bridleway is narrow and passing points are lacking on its northern half there is nothing to indicate that private vehicular use currently causes a problem. Overall however, there are disadvantages to the bridleway being used as the alternative route to Footpath No. 28.

The detailed reasons of the Inspector are shown at Appendix 3H.

Modern timeline – 2013 application to the Magistrates' Court

26. Central Bedfordshire Council applied to the Magistrates' Court for a stopping up order under Section 116 of the Highways Act 1980 in July 2013. The case management hearing set a later date of January 2014 for the substantive hearing to determine the application. However, at that hearing the Council requested the main hearing be adjourned until September 2014 so that the results of the impending June 2014 public inquiry into the public path extinguishment order for the footpath would be known and acted upon.

27. In August 2014 the Council requested a further adjournment to the Magistrates' Court hearing. This was so that the Development Management Committee could reconsider the Magistrates' Court application in light of significant developments relating to the non-confirmation of the public path extinguishment order and the receipt of Counsel's Opinion detailing the risks of proceeding with the Magistrates' Court application. However, the Court refused to consider a further adjournment and so the Council withdrew the application with leave to re-submit it at a later date.