

Central Bedfordshire Council

Development Management Committee

24/05/2017

The determination of an application to reduce the width of Arlesey Footpath No. 5

Report of Paul Mason - Assistant Director - Highways

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Purpose of this report

1. The eastern end of Arlesey Footpath No. 5 has been historically obstructed over the majority of its width by Arlesey Garage and the rear boundary of No. 72 Stotfold Road. The previous owner of the Garage applied for the width of the footpath within the curtilage of the Arlesey Garage to be extinguished: leaving just the narrow remainder along the adjoining alleyway. The Arlesey Town Council has objected to such a width reduction, instead requiring the retention of a greater width. This report looks at the various aspects of both the original application and the Town Council's request.

RECOMMENDATIONS:


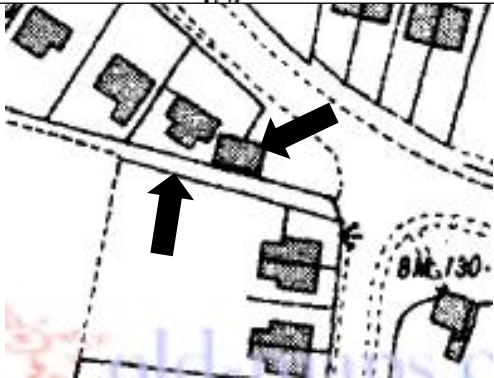
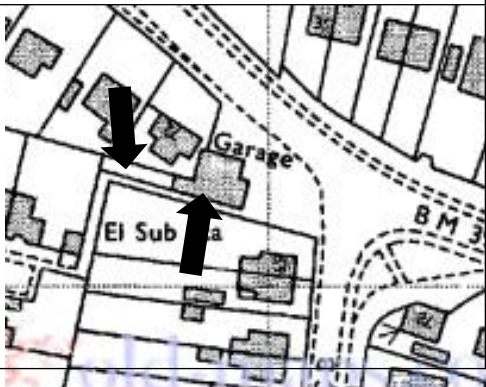
The Committee is asked to:

1. Approve the application to make a public path extinguishment order under Section 118 of the Highways Act 1980 to extinguish that part of the historically obstructed width of Arlesey Footpath No. 5 between points A and B as shown on the map at Appendix A, whilst retaining the unobstructed portion of the footpath that runs along the alleyway between House Lane and Chase Close with a variable width of between 0.82 and 1.22 metres.
2. Formally abandon the County Council of Bedfordshire (Arlesey: Part of Footpath No 5) Public Path Diversion Order 2001 which was objected to and never forwarded to the Secretary of State and is considered erroneous and redundant at this time.

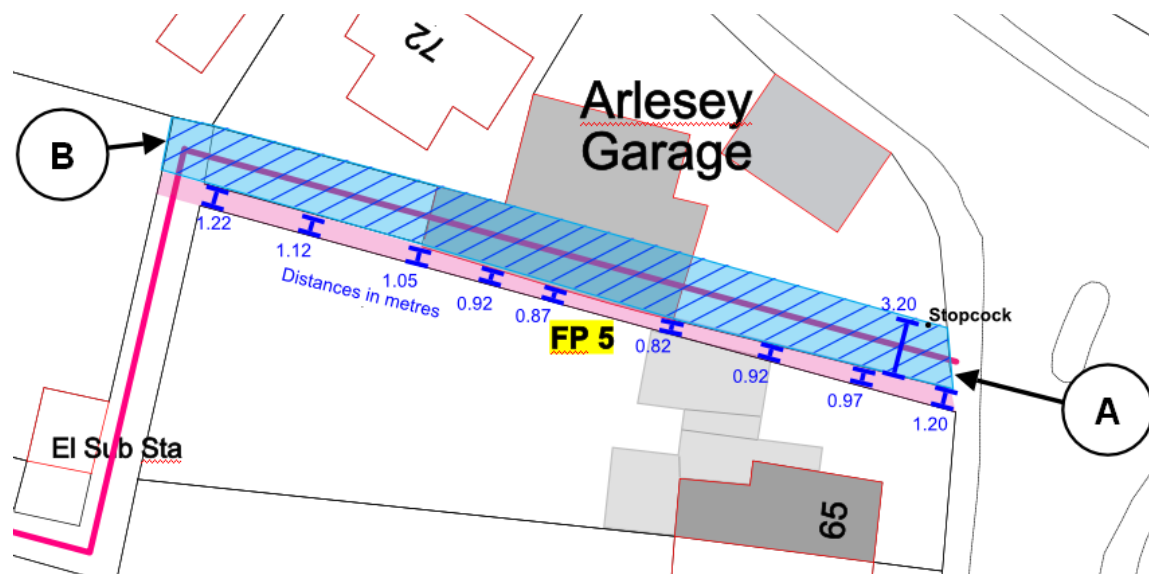
Issues

2. In May 2015 Mr. Steward Chalkley, the prospective purchaser of Arlesey Garage at the corner of Stotfold Road and House Lane asked his solicitor to conduct a CON29 property search. The results indicated that Arlesey Footpath No. 5 passed through the curtilage of the Garage, running along the forecourt, through the 1960s extension to the property and thence through the rear garden of No. 72 Stotfold Road situated to the rear of the Garage.

3. The vendor's solicitor (acting for the then owner, Mr. Gunn) submitted an application in July 2015 to extinguish that part of the width of Footpath No. 5 within the curtilage of Arlesey Garage and No. 72. The proposal plan at Appendix A shows that the retained width of the footpath between points A-B is confined to the currently used alleyway situated between Arlesey Garage and No. 65 House Lane.
4. The Arlesey Garage has now been bought by Mr. Chalkley. Mr. Chalkley has asked to be invoiced for the public path order application whilst leaving the application in Mr. Gunn's name as they have a private financial agreement on this matter.
5. The Definitive Statement for Arlesey Footpath No. 5 does not record a legal width for the obstructed section of path between points A-B. The original 1952 parish path survey also does not record a width. The historical width of the footpath has therefore been estimated from the 1937 25":1 mile Ordnance Survey map which shows the route of the footpath as an approximately 4.0 - 4.5 metre wide agricultural access track.

	<p>Extract from the 1922 25":1 mile Ordnance Survey map (Rev. Ed.)</p> <p>The footpath is annotated "<i>F.P.</i>" for footpath on the map which indicates its character rather than status. No houses are depicted.</p> <p>There is no Garage.</p>
	<p>Extract from the 1937 25":1 mile Ordnance Survey map (3rd Ed.)</p> <p>The access to the field is now delineated by the boundary to No. 72 House Lane and is a wide track (arrowed).</p> <p>The Garage is recorded as a small building (also arrowed).</p>
	<p>Extract from the 1977 1:2,500 Ordnance Survey map (4th Ed.)</p> <p>The Garage is shown significantly extended over and into the previous access track to the field. (arrowed)</p> <p>The track to the rear of No.72 House Lane is shown as a separate land parcel (also arrowed).</p>

6. The centre-line of Footpath No. 5 is recorded on the Definitive Map as running along the centre of the historical access track and thus outside the current alley way; instead running through the Arlesey Garage and forecourt and within the rear garden of No. 72 Stotfold Road. Consequently, even if it can be proved that the enforceable width of the footpath is less than the width of the historic access track, enforcement action would still be required to make the footpath open and available for public use.



Measured widths of eastern portion of Footpath No. 5 showing the centre-line of the footpath

7. The issue of the narrowness of Footpath No. 5 was previously addressed in 2000-2001 by the former Bedfordshire County Council when it made a public path diversion order to move the legal line of the footpath out of the Garage on to the alleyway. At that time the County Council considered the footpath to be narrower and didn't include the alleyway. The *County Council of Bedfordshire (Arlesey: Part of Footpath No. 5) Public Path Diversion Order 2001* was made in March 2001 but received objections from a number of local and national walking groups. For reasons unknown, the order was not forwarded to the Secretary of State and instead was informally abandoned without resolving the issue.
8. The usable width of Footpath No. 5 along the alleyway connecting House Lane to Chase Close varies between approximately 0.82 and 1.22 metres (see above plan) making it impossible for pushchairs or wheelchairs to pass each other or oncoming walkers. However, it is a functional width for unidirectional traffic.



The narrow section extends from point A on House Lane for approximately 44 metres to the dog-leg and wider alleyway at point B adjacent to Chase Close.

9. To increase the width of the alleyway would require either the demolition of the boundary wall and outbuilding (garage) of No. 65 House Lane or the demolition of forecourt wall, extension to the Arlesey Garage and removal of the trees, rear fence and garden shed of No. 72 Stotfold Road. No. 65 House Lane is an innocent party in this issue: the obstruction being caused by the southwards extension of the Arlesey Garage in the c.mid-1960s, see photographs below.



Photo taken in possibly the 1950s.

A single-story garage with one work bay



Photo taken in c.1970s

Redevelopment to a two-story building with two work bays. The apex of the original building is marked by the rendered surface.



(c) Google Street View

Photograph taken in July 2016

Showing further development of a second story above the second work bay.

10. Given the historic nature of the obstructions, the case officer consulted on the proposed width reduction of the legal width of Footpath No. 5 to the current width of the alleyway. However, the Arlesey Town Council and the local ward member, Cllr. Richard Wenham have both requested that the proposed width reduction should retain a greater width than the alleyway, so that if the Garage were ever redeveloped, a wider footpath could be recreated. The Town Council's and local member's requests are included at paragraphs 36 and 40 below and a plan of the extra width required is shown at Appendix C.

Legal and Policy Considerations

11. The legal and policy considerations of this application and of the Arlesey Town Council's request for a greater width are discussed at Appendix B, and summarised below.

Validity of the Definitive Map and duties of the Council

12. Section 56 of the Wildlife and Countryside Act 1981 provides that the Definitive Map and Statement are conclusive evidence at law of the status, position and width of any public right of way recorded on it. The Statement would normally be used to define the width but in this case no width is recorded. Consequently the historic width of the 1937 agricultural access track (4 - 4.5 metres) has been used to establish the likely width for the footpath. Schedule 12A to the Highways Act 1980 does provide a backup by specifying minimum and maximum widths of 1.0 and 1.8 metres respectively for a non-field-edge footpath where a width cannot be proven. Using this maximum width of 1.8 metres would include very little of the alleyway as the legal line of the footpath would run almost in its entirety through the Garage, forecourt, and the rear garden of No. 72 Stotfold Road.

Enforcement of a right of way

13. Section 130 of the Highways Act 1980 imposes a duty on the Council, as the Highway Authority, to assert and protect the rights of the public to pass and re-

pass along all public highways and provides a range of legal mechanisms by which a variety of different types of obstruction can be removed under Sections 143, 149, 154 and 137 of the Act (see paragraphs B.21 *et seq.*)

14. Any enforcement action would require notice to be served on the land owners specifying what was required to be removed and by when. The recipients of the notices could, for certain obstructions, appeal to the Magistrates' Court. If the obstructions were not removed the Council could (depending on the type of obstruction) either then enter the property to remove the obstruction, apply to the Magistrates' Court for a court order to do so, or seek to prosecute the owners for failing to remove the obstructions.

Central Bedfordshire Council's Policy

15. The Council's Rights of Way Enforcement Policy dictates how the Highways Act 1980 should be applied to those rights of way that are obstructed. Under the policy the Council is able to waive the requirement that an obstructed path be open before processing an application. The Council is required to act in a reasonable and proportionate manner when considering its actions. This is especially so as the obstructions are historic in nature and have not been imposed by the current owners of the land in question.

The Proposed Extinguishment

16. Sections B.10 – B.15 of Appendix B consider the legislative tests of Section 118 of the 1980 Act which is the discretionary power of the Council to stop up some or all of a public path. The essential criteria of Section 118 are:
 - a. That it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, and
 - b. That the Secretary of State or Council are satisfied that it is expedient to confirm an extinguishment order having regard to the extent that the path is likely be used by the public (if not stopped up) – ignoring any temporary obstructions - and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.
17. The term *expedient* allows the Council to consider the impact of the proposal and the path on both the users and owners of the land as well on whether it is appropriate to enforce a greater width or maintain the historical status quo.
18. When all factors are considered, I consider it is expedient to maintain the current status quo of this footpath and to seek the extinguishment of the entire section of historically obstructed footpath, retaining the currently used, if somewhat narrow, alleyway.

Case law

19. There are two significant judgments relating to stopping up obstructed footpaths: these are the *Ashbrook* and *Send* cases at paragraphs B.16 and B.19 respectively. I do not consider either case is directly applicable to this

application and would not prevent the Council from making or confirming an extinguishment order.

Land Ownership

20. The current width of the alleyway between points A-B is unregistered, although it has a caution against it by Eastern Power Networks owing to the electricity cabling laid beneath the alleyway.
21. The curtilage of Arlesey Garage under Title BD306566 shows that the extent of the ownership includes the historic section of agricultural access track.
22. The curtilage of No. 72 Stotfold Road also includes the extent of the historical track to the rear of the property and was recorded as doing so in February 1988.
23. The curtilage of No. 65 House Lane is unregistered. The owner, Mrs. Taylor, inherited the house from her father who lived there in the c.1950s and his father before him. She stated that her father owned the access track as part of the property but was not concerned when the Garage encroached over the access track in the 1960s.
24. Within the errors and constraints imposed by the scale of historic mapping (25":1 mile and 1:2,500) it is unclear whether any of the historic access track has been encroached upon by No. 65 House Lane. What is clear, though, is that the garage and the rear garden of No. 72 have both encroached significantly over the access track.

Options for Consideration

25. This report proposes and recommends that the majority of the width of the footpath between points A-B be extinguished to leave just the width of the existing alleyway which varies between 0.82 and 1.22 metres in width. No works would be required to achieve this result.
26. Arlesey Town Council has, however, requested that a greater width (2.0 metres) be retained. The Town Council had also originally requested that the full 2.0m width of the retained footpath be enforced to either side of the physical extent of the Garage building and opened up for public use and the differing ground levels adjusted. The Town Council considers that the cost of any works should be paid for by the owners of the land. The enforcement aspect of this request has subsequently been withdrawn.
27. If an order is confirmed for the retention of a 2 metre wide footpath and the Central Bedfordshire Council considers it expedient to enforce the legal width, with the exception of the Garage building itself, the Council will have to serve formal notice on the owners of No. 72 Stotfold Road and the Arlesey Garage.
28. The obstructions that would need to be removed are:
 - i. Approximately 18 metres of low (approx. 1 metre high) brick wall alongside the forecourt
 - ii. Approximately 11 metres of low brick wall with panel fencing above to the rear of No. 72 Stotfold Road

- iii. Approximately 1 metre of 2 metre high brick wall to the rear of No. 72 Stotfold Road
 - iv. A large 29 year old ornamental cherry tree and two elder trees and miscellaneous shrubs within the rear garden of No. 72 Stotfold Road
 - v. A garden shed within the rear garden of No. 72 Stotfold Road
 - vi. Possibly other miscellaneous garden material from behind the fence of No. 72 Stotfold Road.
 - vii. Additionally the tarmaced forecourt of the Garage would need to be lowered to the level of the alleyway. Similar work may be required for the ground level at the rear of No. 72 Stotfold Road.
29. The owners of No. 72 can appeal to the Magistrates' Court over the requirement to remove trees and any miscellaneous deposits (including surfacing/paving) under Sections 154 and 149 of the 1980 Act respectively. If the Court refuses the appeal it can direct the obstruction to be removed by the Council.
30. If the owners of the Garage and No. 72 do not remove the obstructing walls, fence and shed within the times specified in the notice served under Section 143 the Council can either undertake works to remove the obstructions, or can seek to prosecute the owners of the obstructions in the Magistrates' Court under Section 137ZA of the Act.

Consultations

31. Mr. Chalkley, the owner of Arlesey Garage, has been consulted on the proposal and on the Arlesey Town Council's request for a 2 metre width. In a letter, dated 3 May 2017, Mr. Chalkley stated:

"...You have asked me to give my reasons why I appose the application to widen the footpath to two metres in front and behind the garage.

- 1. The doors into the building will be obstructed.*
- 2. Removal of fence and trees in garden of 72 Stotfold Road will compromise the structure of the building.*
- 3. The stopcock serving water main to properties in House Lane is located in proposed footpath and would require removal.*
- 4. Arlesey Town Council are agreed to leave footpath as it is."*

32. With regard to point 3 Mr. Chalkley is of the opinion that the works to remove the trees and boundary wall would be sufficient to compromise the structural integrity of the Garage's extension to the extent that the entire structure would require demolition. Whilst the extension does look slightly decrepit, I cannot comment on its resilience to the ground works required to open up the footpath.



33. Mr. and Mrs. Kirwan, the owners of No. 72 Stotfold Road, have been consulted on the proposal and on the Arlesey Town Council's request for a 2 metre width. In a letter, dated 5 April 2017, Mrs. Kirwan outlined the history of her property and of the Garage as she knew it, stating:

"...In 1948 Mr Pyman purchased the Garage and house. When the new development (Chase Close and The Poplars) was built, Mr Pyman built a low wall, his family recall that he said 'he had to leave a three-foot width for the footpath' which he did. (This wall still forms the boundary of our property). During this period of ownership, Mr. Pyman extended the garage, his family said he had building regulations for this. In January 1985 the garage and house were sold to Mr. Gunn, who divided the two buildings. He sold the house... in January 1986 and it remained empty until my husband and I purchased the house in December 1986.

We registered the land at the time of purchase, we were aware of the footpath running behind our property and there was no condition in our purchase agreement regarding any right of way over our land. The fact that Mr Pyman and Mr Gunn had been allowed to extend the garage, forming a narrower footpath, plus, the fact that our garden boundary is also in line with the garage wall, leads me to believe that the three-foot rule was adhered to and that the land gained was legally belonging to the property. Furthermore, the permission for the building work lies with the County Council, who would have also agreed to the width of the footpath.

I would like to say that I cannot see what positive outcome would be achieved in the local authorities requesting this piece of land for a wider footpath, especially because the footfall on the existing one is low. We have lived in this property for over thirty years, the existing boundary wall has been in place for at least fifty years. I would suggest this section of land in dispute, is classed as Excepted Land. It has two three mature trees, a patio and a workshop on it, plus nesting Wrens, Blackbirds, Wood Pigeons and Bumblebees. I feel the [Town] Councils pursuit to claim this section of land is a waste of time and public money, not to mention the distress caused to our family."

34. In response, the process of mapping public rights of way did not start until the early 1950's, with the Draft Map of Public Rights of Way being published in April 1953 and the first Definitive Map and Statement in March 1964. This was shortly before the possible construction of the Garage extension. Whilst planning consent is required prior to development taking place, such consent does not remove the additional legal requirements to stop up or divert public rights of way affected by the development before that development takes place. In the 1960's and 70's liaison between the various district councils and County Council over planning and rights of way issues was poor: numerous incidences of buildings being built over the legal lines of footpaths date from this period. Additionally, the rights of way question on property searches (Form CON29) has only been compulsory since 4 July 2016. Prior to that date the optional question was not always asked and many owners (such as the Kirwans) are unaware that a public right of way passes through their garden or house until they are contacted years later by the Council. Moreover, fencing part of a right of way into a garden

does not extinguish that right, instead creating an unlawful obstruction to the highway.

35. Mrs. Taylor, the owner of No. 65 House Lane has discussed the issue in a number of telephone calls to the Senior Definitive Map Officer. She stated that her father owned the house originally and that he owned the access track to what was originally fields where Chase Close is now situated. He had not objected to the encroachment of the Garage on to the track. This would have been shortly after they moved their caravan out from the end of the garden along the track in the early 1960's. Mrs. Taylor has stated that her stopcock is situated within the Garage's forecourt at what would have been the historic northern boundary of the access track.

36. Arlesey Town Council was consulted and stated in an e-mail, dated 21 December 2016,

"...The Town Council considered the proposed reduction of Arlesey Footpath No. 5 at its meeting held 20th December 2016, and resolved to OBJECT on the basis that any future redevelopment of Arlesey Garage would enable the path to be reinstated to its original width. The Town Council is aware that users of the path in its current state complain of its width being far too narrow. Whilst the Town Council is not suggesting that the Garage be demolished, it is mindful that at some point in the future the Garage and site may be redeveloped. In this event, the Town Council would wish to see a planning condition applied to ensure that the footpath is widened in order to re-establish, as closely as possible, the defined legal width..." The area subject to be enforced is shown on the plan at Appendix C by red shading with the obstruction caused by the main Garage building shown in green.

37. Following a later site meeting with the Senior Definitive Map Officer, the Town Council stated in a further e-mail, dated 9 March 2017,

"...The Town Council would be agreeable to the reduction in width of the highway and increase of the footpath by 2 meters, providing that a 2 meter widening of the usable width of the footpath to the front and rear of the current building is achieved at the garage owner's own cost including the removal of trees, repositioning of fence of 72 Stotfold Road and attaining the appropriate ground levels. The deeds of the property should record the existence of a 2 meter footpath in its entirety, so as to preserve and protect the reinstatement of the full 2 meter width at the point of any future redevelopment..." The Parish Clerk also confirmed that *"...You are correct in your assumption that ATC would indeed object to an order to narrow the footpath to the current width of the alleyway ..."*

38. Further to correspondence sent to the Town Council by Mr. Chalkley, the Town Council reviewed its previous resolution on Footpath No 5 at a meeting held on 18 April 2017. The Town Council has now stated that it

"...was informed that 72 Stotfold Road is held under a separate freehold to the Garage site, and given that 72 is not due to change ownership in the near future, coupled with the fact that 72 may have already established boundary rights at Land Registry (as we are locally informed), the Town

Council's previous position that the path be made wider to the front and rear of the garage is obviously unachievable. Taking this into account, and also the effect that moving the wall to the front of the garage would have on access to the garage, the Town Council reviewed its position and resolved that it would not seek the enforcement of short term action as previously requested, but in the event of any future re- development of the Garage site or 72 Stotfold Road a reinstatement of the 2 meter width would be required..."

The Town Council also reiterated that it would object to the proposed width reduction.

39. In response – any width of the footpath that is obstructed would remain an unlawful obstruction. The council cannot fetter its duties under the Highways Act 1980 by issuing any guarantee not to enforce the full width of route at a later date: indeed it could be compelled to do so by a court order under Section 130B of the Act.
40. The local ward members were consulted. Cllr. David Shelvey stated in an e-mail that *"...I have no problem with this..."* Cllr. Richard Wenham stated an e-mail that *"...I am not convicted[sic] of the need to make this change. Just because a structure has been (illegally) constructed on part of a PROW does not in my view mean it should be legitimised. At some point in the future there may be an opportunity to return the path to its correct width over its full length. We should certainly not further restrict the width over the blue area shown on the map ..."*
41. In response – any order which leaves part of the order route obstructed is likely to be fraught with legal difficulties and benefits nobody. The proposed inclusion of part of the Garage within the order route in order to secure a greater width at some unknown date following some future redevelopment of the Garage is a tenuous reason. It would be much better to ensure the order route is not obstructed by a building and, if the Garage is redeveloped at some point in the future, to specify as a planning condition at that time that space be made for an extra width of footpath to be dedicated and set out prior to the redevelopment commencing.
42. The Chiltern Society and Ramblers were consulted but have not responded.
43. British Telecom, National Grid (gas), UK Power Networks, and Anglian Water were consulted as statutory undertakers. Anglian Water did not respond. National Grid has stated it has no apparatus and therefore no objection to the proposal. Similarly, BT Openreach has stated it has no objection to the order being made.
44. UK Power Networks has stated *"...I am a little concerned by this notice as we have high voltage and low voltage underground cables in this path that provide supply to a large part of Arlesey. Any reduction in width will have an adverse effect on our ability to maintain the cables or make necessary fault repairs. It may also create a safety issue to the adjoining properties and their owners or people working there, i.e. fencing contractors, etc..."*
45. Following reassurance that the alleyway was not being narrowed beyond its current width UK Power Networks subsequently stated: *"...Based on your information below I will withdraw the objection. Can you please forward a copy*

of the amended extinguishment order clearly stating our rights so that we can add it to our files please. The replacement cabling has not yet been done due to resourcing problems but, hopefully, this will be done early in the new year. I have copied in our Project Manager for this work... who can liaise with you directly regarding timings for the work and future resurfacing..."

Reason for Decision

46. Arlesey Footpath No. 5 is obstructed between points A-B by a variety of walls, fences, trees, shed and the southern work bay of Arlesey Garage and has been so for potentially 50 years.
47. Consequent to a CON29 property search an application has been made to extinguish the obstructed section of footpath whilst retaining the unobstructed but narrow (0.82-1.22 metre wide) section along the alleyway between House Lane and Chase Close.
48. Arlesey Town Council has requested that a greater width of 2.0 metres be retained so that this greater width can be reclaimed if the Garage is demolished in the future.
49. The recommendations in this report would not physically alter anything on the ground but would merely change the legal record for Arlesey Footpath No. 5. Arguably enforcement action could be taken to enhance the route of the footpath and thus increase its suitability and usability but this is considered to have a disproportionate effect on the affected landowners.
50. This report consequently proposes that the Town Council's request should be not granted and that the application should be approved as made.

Council Priorities

51. The retention of the existing narrow footpath weighs the needs of local residents against the effect of enforcement action on local land and business owners. By keeping the status quo it perpetuates the inconvenience experienced by those with mobility scooters and pushchairs but supports landowners who have lived with this network anomaly for half a century. The Committee has to balance the interests of local owners and residents and the public at large in determining how to act in a responsive but proportionate manner. This proposal as set out therefore meets the following Council priorities to varying degrees:

- Delivering great residents' services
- Protecting the vulnerable, promoting wellbeing
- Creating stronger communities
- An efficient and responsive Council

Corporate Implications:

Legal Implications

52. The legal line of Arlesey Footpath No. 5 is currently unlawfully obstructed by a variety of items (trees, fences, walls, garden shed and the Garage's southern work bay). The Council has a legal duty to seek the removal of these, or alternatively to use its discretion to seek the extinguishment of the obstructed sections.
53. If the Council makes a public path extinguishment order, as recommended, it is likely that the Town Council will object. If any objections are made and not withdrawn the Council cannot confirm the order as an unopposed order but instead would have to consider whether to forward the order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. The Secretary of State appoints an independent Inspector to hear the objections and to confirm, modify or not confirm the order.
54. If the proposed order is not confirmed the Council will then have to address what it does with the obstructions within the full 4-4.5 metres width of the footpath.
55. If the Committee resolves to retain a greater width than the width of the current alleyway, then enforcement action may need to be taken at a later date by serving notice on the owners of the land and potentially arguing the case for enforcement in the Magistrates' Court.
56. There is the potential risk that if any appeal to the court is successful the Council may not be able to undertake the enforcement action to open up the footpath to its legal width.

Financial Implications

57. Mr. Chalkley, the current owner of Arlesey Garage has confirmed in writing he wishes to be invoiced for Mr. Gunn's application as part of a private agreement with the previous owner. Consequently the Council's administration costs of approximately £2048 up to and including the making of the recommended order and the cost of advertising the making and any confirmation of the recommended order will be recharged to him if a public path extinguishment order is made as per the current recommendation.
58. However, if the Committee resolves that no order should be made the current legislation (Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), as amended) prevents the Council charging for any administration costs already incurred: these costs would be borne by the Highways Assets Team's budget.
59. Similarly, if the Committee resolves that the an order should be made to retain a greater width than that applied for, it is my opinion that no charge should be made to the applicant. This is because such an order would be contrary to the applicant's interests as it could detrimentally affect the use of the Garage and may lead to future enforcement issues. Consequently, in such a case, the

administration and advertising costs would again be fully borne by the Highways Assets Team's budget.

60. Whatever the width of footpath retained in the public path extinguishment order, it will attract objections from either the Town Council or the effected landowners. The order, if not abandoned, would need to be forwarded to the Secretary of State with a supporting case bundle and further submissions as part of the process of either written representations, a public hearing or a public local inquiry. These administrative costs, including the potential hire of a local venue, would be borne by the Council and could cost between £500 and £2000 which would be paid out of the Highways Assets Team's budget.
61. If an order for a greater width than the current alleyway is made, the Council may need to attend the Magistrates' Court to defend any enforcement notices issued and to potentially prosecute the obstructors. If the Council was successful, its costs of approximately £2000 would be reimbursed by the losing parties. However, if the Council lost it would be liable for the winning parties' legal fees and court costs – which could exceed several thousand pounds. These costs would need to be paid from the Highways Assets Team's budget.
62. If enforcement action was taken and the Council chose to undertake the clearance work itself, it would have to initially pay its contractors from the Highways Assets Team's budget and then seek reimbursement from the land owners for the cost of the works. The costs of the works including disposal of waste/arising would be approximately £2000.

Equalities Implications

63. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
64. Arlesey Footpath No. 5 currently has a restricted width of between approximately 0.82 and 1.22 metres. This does make it difficult (but not impossible) for double buggies and mobility scooters to use the route. It does mean though that pedestrians have to defer to approaching users already on the path.
65. The proposal would not change this situation but would remove the public right of way from the adjoining properties which currently have the prospect of enforcement action being taken against them.
66. The Town Council's alternative proposal of retaining a greater width and having enforcement action taken to open the route of the footpath up across the rear garden of No. 72 and the forecourt of Arlesey Garage would marginally benefit the public as the narrow section of the footpath would be reduced from approximately 44 metres to 18 metres in length – thus marginally improving the passage of buggies and mobility scooters. This though would have a detrimental effect on the owners of these properties.

Community Safety Implications

67. 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 alleyway is narrow and does not allow a great deal of space for people to pass each other by. This could have safety implications if walkers have aggressive dogs. The proposal would not change the current situation however, but would merely maintain the status quo.
68. The Town Council's alternative proposal to provide a wider route through enforcement action would provide more room for walkers, buggies and dogs – although a narrow, 18 metre long, section would remain in the middle of the alleyway.

Corporate Risk

69. Arlesey Footpath No. 5 has been historically obstructed for over 50 years. Whilst the present owners of No. 72 Stotfold Road were unaware of the footpath when they bought their property, the new owner of Arlesey Garage was aware that the building obstructed the footpath. The new owner was, however, advised by the Council that an order removing the footpath from the building could be made but that confirmation of that order was never a certainty.
70. This report considers that enforcement of such a historic obstruction is unreasonable and not expedient owing to the passage of time – although legally it could be done. Moreover, any enforcement action would not remove all the obstructions unless the demolition of part of the Arlesey Garage was also considered.
71. The enforcement of the historic legal line of the footpath is likely to cause some degree of press interest: this is unlikely to be sympathetic to the Council's cause.

Conclusion and Next Steps

72. The eastern end of Arlesey Footpath No. 5 does not have a recorded width, instead its width of 4-4.5 metres has been inferred from the historic agricultural access track that it ran along. However, the majority of the width of Arlesey Footpath No. 5 has been obstructed by walls, trees, fences and the extension to Arlesey Garage since this was built in the c.mid-1960s. The remaining width of the footpath, between approximately 0.82 – 1.22, metres is usable but does not allow prams or mobility scooters and pedestrians to pass each other.
73. Prior to the sale of the Arlesey Garage the vendor submitted an application to stop up that part of the width obstructed by the Garage, forecourt wall and wall, trees and shed situated in the rear garden of the neighbouring property (No. 72 Stotfold Road). This report proposes that the application to be approved and a public path extinguishment order made to stop up the majority of the width of the footpath: retaining just the width contained within the existing alleyway.

74. Arlesey Town Council has objected to the proposal, instead wanting a greater width of 2 metres retained so that this can be reclaimed if the Garage was ever demolished.
75. If no extinguishment order was made/confirmed the Council would have to review what action it should take in light of the obstructed nature of the footpath.

Appendices

Appendix A – Plan of proposed extinguishment

Appendix B – Legal and Policy Considerations

Appendix C – Alternative proposal by Arlesey Town Council.