
Meeting: Development Management Committee

Date: 21 October 2009

Subject: The determination of an application to extinguish parts of Silsoe Footpath No. 16 and Bridleway No. 18 and to create an alternative footpath and bridleway in the parish of Silsoe.

Report of: Roy Waterfield - Assistant Director of Leisure and Cultural, Adult and Community Learning

Summary: Members are asked to determine whether an application to extinguish a cross-field section of Silsoe Footpath No. 16 and Bridleway No. 18 and to create an alternative field-edge footpath and bridleway should be refused or approved and Public Path Orders subsequently made under Sections 26 and 118 of the Highways Act 1980.

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Public/Exempt: Public

Wards Affected: Silsoe & Shillington

Function of: Council

RECOMMENDATIONS:

- 1. That the application to extinguish parts of Silsoe Footpath No. 16 and Bridleway No. 18 and to create new sections of Footpath No. 16 and Bridleway No. 18 under Sections 26 and 118 of the Highways Act 1980 should be refused on the ground that the extinguishment and creation of the footpath does not meet the required legislative tests.**

Introduction

1. Mr Gill of Fielden House applied in late 2005 to divert parts of Footpath No. 16 and Bridleway No. 18 in the parish of Silsoe close to Fielden House where he lives. Mr Gill's application underwent significant revision before eventually being sent out to consultation in the form shown at Appendix 1.
2. The part of Footpath No. 16 to be extinguished runs across an arable field and two paddocks between points A-B-C on the plan at Appendix 1. The part of Bridleway No. 18 to be extinguished runs along the private driveway to Fielden House between points D-B. The bridleway is a dead-end for riders at point B where it has a junction with Footpath No. 16.

3. The footpath to be created would start at point A and run as a 2 metre wide field-edge path parallel to Fielden Lane to point F on the plan at Appendix 1 where it would have a junction with the new bridleway. The new bridleway to be created would start at point E on Fielden Lane and cross over a culvert into the arable field to then run around the edge of the field with a width of 4 metres to point C where it would have a junction with the adjoining Bridleway No. 15.
4. The orders, if made and confirmed, would create a continuous highly elongated bridleway route from point E on Fielden Lane to point C and then back along Bridleway No. 15 to rejoin Fielden Lane some 195 metres to the north-east of point D. Connecting bridleways on the north side of Fielden Lane provide access to Silsoe village.

Legal and Policy Considerations

5. The Highways Act 1980 empowers Central Bedfordshire Council to make legal orders to create, extinguish and divert public rights of way (footpaths, bridleways, and restricted byways) shown on the Definitive Map which is the Council's legal record of such rights. Sections 26 and 118 of the 1980 Act relate respectively to the creation and extinguishment of such rights.
6. The Development Management Committee under the Central Bedfordshire Council's Constitution (E2 at Annex C) is the appropriate body to determine an application requesting that the Council, as highway authority, make an order under the Highways Act 1980 to create, divert, or extinguish a public right of way.
7. It is the normal practice to move a public right of way by diverting it using Section 119 of the 1980 Act. However, Bridleway No. 18 terminates on a footpath at point B making this is dead-end path for riders and cyclists. Consequently it is my opinion that a diversion could not meet the legislative tests of Section 119 and could not be diverted (see Appendix A section A.3.). Furthermore, it is my opinion that Footpath No. 16 could also not be diverted as the new termination point F is not currently on a public right of way. In such situations it is sometimes possible to extinguish the existing paths and to create new alternatives.

The Extinguishments

8. The legislative tests for creating and extinguishing public rights of way are detailed in Appendix A. Essentially a path can only be extinguished if it is not needed for public use and a new path can only be created if there is a need for it. It is possible, however, to link a creation and extinguishment together so that an alternative route can be created to compensate for the route being extinguished. However, both creation and extinguishment orders should be capable of being made and confirmed as stand-alone orders.
9. Bridleway No. 18 is currently a dead-end to horse riders and cyclists who legally have no right of way beyond point B. Walkers though may travel westwards back to Fielden Lane or eastwards to join either Bridleway No. 15 which leads back to Fielden Lane or along a number of footpaths to Higham

Gobion. There are alternative rights of way providing access to the Fielden House area (Bridleway No. 15 and Footpath No. 16). Consequently it is my opinion that Bridleway No. 18 is unlikely to be needed for public use in its current position - especially if consideration is given to the proposed alternative bridleway which would provide a useable through-route for riders and cyclists. It is therefore my opinion that it would be expedient for the Council to make an order to extinguish the bridleway.

10. Before an extinguishment order can be confirmed any future use of the path has to be considered - as detailed in Appendix A Section A2(2). It is likely that if the extinguishment order was not confirmed, riders and cyclists would use the alternative new bridleway to facilitate their onwards travel. Walkers, however, are likely to continue to use the existing bridleway between D-B and then onwards to point C - though in my opinion this use would not be extensive as there are already two alternative routes available.
11. Footpath No. 16 runs due west from point C to the A6 - walkers can then continue westwards to Pulloxhill some 3 km away. To the east of point C walkers can either walk north-westwards to Fielden Lane or south-westwards to Higham Gobion about 1.6 km to the south-east. Although Bridleway No. 15 can be used instead of the footpath this is a less direct route being some 250 metres longer and uses some 480 metres of Fielden Lane which is quite narrow. The proposed creation of a new footpath and bridleway, in my opinion, would not provide a suitable alternative to the current footpath and so I consider that the current footpath is needed for public use - although this level of use might be quite low. In my opinion it would not be expedient to make an order - even when taking into consideration the proposed alternative route to be created.
12. Before the extinguishment order can be confirmed any future use of the path has to be considered - as detailed in Appendix A Section A2(2). It is likely that if the extinguishment order was not confirmed, walkers would continue to use the existing footpath in preference to the footpath and bridleway proposed to be created. The extinguishment of the footpath would benefit the local farmer, Mr. Chris Rogers, as it would remove his obligation to restore the cross-field footpath after ploughing and to mow or spray out any crop obstructing the footpath. In my opinion it would not be expedient for the Council to confirm an order to extinguish the footpath.

The Creations

13. The current routes of Bridleway Nos. 15 and 18 are dead ends - being separated by approximately 125 metres of footpath. The proposal to create a new bridleway from point E on Fielden Lane to link with Bridleway No. 15 at point C would benefit the local bridleway network and allow circular rides to be extended from Silsoe to include the south side of Fielden Lane. The new bridleway would have a width of 4 metres and run as a field-edge path around what is currently an arable field. Although "desirable" for a small number of local horseriders I am unsure whether the bridleway would add significantly to the "*convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area*" which is the test of the Act (see Section A.1.) on its own. However, when combined with the proposed bridleway extinguishment, I consider that it would be expedient make an order

to create the bridleway.

14. The creation of a new 2 metre wide footpath would provide an off-road route between point A and the new bridleway at point F. This section of footpath is unlikely to be used if the section of Footpath No. 16 between points A-B-C remains. If this section was extinguished the provision of a new off-road link between points A and E would be beneficial but not in my opinion to the extent required to satisfy the tests of the Act (see Section A.1.). In my opinion it would not be expedient for the Council to make an order to create the footpath.

Consultations

15. The arable field through which Footpath No. 16 and Bridleway No. 18 run is owned by Mr. Rogers of Shillington Manor. In a telephone conversation in late August 2009, Mrs. Rogers stated that whilst agreeing in principle to the aims of the proposal, she could not give her consent to the application owing to a number of unresolved issues that existed between the applicant and Mr. and Mrs. Rogers.
16. Silsoe and Gravenhurst Parish Councils were consulted on the proposal. Silsoe Parish Council has stated "*...the reasons for the Parish Council's objection are that (a) the estimated length of footpath / bridleway between Points A, F & C is 770m, compared to 530m along the present route between Points A, B & C (an increase of 45%); (b) the diversion creates a significant 'dog-leg' on what is currently a direct line from FP13 to New Inn Farm by the A6; and (c) it is also inconvenient for walkers to share with horses because of the damage that horses create, particularly on soft ground....*"
17. The Bedfordshire Rights of Way Association was consulted and has stated that "*...The existing route of the footpath offers a direct and open pedestrian only route between A and C 520 metres in length. The proposed route A-F-C takes walkers out of their way along an indirect route 760 metres in length (240 metres longer) which has views restricted by hedges. Half of it runs adjacent to Fielden Lane. The section F-C would be shared with horse riders and cyclists. The views of the pond close to point C would be lost... ..The proposal would resolve the problem of the dead-end [bridleway] section D-B. However, we feel a better solution would be to extend the section D-B through to C. This would provide a more direct and open route, offer views of the pond and remove the need of users to pass by the proposed electric fence close to point C...*".
18. Ramblers was consulted and has stated that it "*...unanimously voted to object to the part extinguishment of footpath No.16 namely ABC and part bridleway No. 18... ..the proposed footpath is longer and the right angled turn makes it less convenient ...Walkers would find the created footpath ABC is much less pleasurable than the existing footpath No.16 ABC...*".
19. Mr. Dicker of Gravenhurst P3 Group has stated in a telephone conversation that he supports the connection of the two bridleways and that the footpath to be extinguished is not really used.
20. The British Horse Society was written to state that "*...This sounds a good idea*

to me, especially having the stile removed so riders could continue along bw 15 back to Fielden Lane...”

21. British Telecom (BT), National Grid, Geodesys, and EDF Energy were consulted as statutory undertakers. BT, National Grid, and EDF Energy have all responded stating that they have no objections to the proposals. Geodesys has not responded to date (24th July 2009).

Conclusions

22. The combined extinguishment and creation orders would effectively divert a cross-field footpath and driveway bridleway to form a field-edge path - part footpath and part bridleway. Whereas I consider the concurrent extinguishment and creation of the bridleway to be of benefit to the public I do not consider that the concurrent extinguishment and creation of the footpath to be beneficial to the public - although it would aid the farmer by removing his obligation to keep the footpath clear of crops.
23. Responses to consultations are mixed - with the British Horse Society welcoming the joining up of Bridleway Nos. 15 and 18 - and walking groups and local Parish Council rejecting the proposals due to the increased inconvenience for walkers.
24. In my opinion the negative responses when combined with the failure of the proposal to meet the legislative tests for the extinguishment of the existing footpath and the creation of an alternative route means that the application as a whole should be rejected.

CORPORATE IMPLICATIONS
<p>Council Priorities:</p> <p>The proposal would compliment parts of the Council’s Outdoor Access Improvement Plan by increasing bridleway connectivity.</p> <p>Financial:</p> <p>All costs relating to the application, if successful and unopposed, would be paid by the applicant. However, if objections to any orders made were received and not withdrawn the Council would have to consider whether to forward the orders to the Secretary of State for the Environment, Food and Rural Affairs for confirmation. If the Council decided not to forward the case, any costs incurred up to that point would be borne by the Council. Any costs associated with forwarding the case to the Secretary of State would also be borne by the Council.</p>

Legal:

If extinguishment and creation orders are made, notice of these is advertised and posted on-site. There then follows a statutory objection period of not less than 28 days. If any objections are received and not withdrawn the Council cannot confirm the orders - at which point they have legal effect - and must decide whether or not to forward them to the Secretary of State for the Environment, Food and Rural Affairs who appoints an independent Inspector to determine whether the orders should be confirmed or not.

Risk Management:

No risk issues in my opinion.

Staffing (including Trades Unions):

No staffing issues in my opinion.

Equalities/Human Rights:

The connection of the two bridleways would necessitate the removal of a stile at point C which would open up the route to mobility impaired users.

Community Safety:

Horses and walkers would have to travel slightly further along Fielden Lane thus marginally increasing risks of accidents with vehicles.

Sustainability:

No sustainability issues in my opinion.

Appendices:

Appendix A – Legal and Policy Considerations

Appendix 1 – Map showing the proposal