

## **Appendix F**

### **The democratic process at the former Bedfordshire County Council**

- F.1. Mr. Alan Bowers, the applicant, has made several allegations concerning:
- (a) How former County Council gathered the evidence for the original 1995 Definitive Map modification order;
  - (b) The position of the former County Council and its officers in relation to the two extinguishment orders made by the former District Council; and,
  - (c) The actions of former County Council's Members and officers in relation to how the authority dealt with the footpath in the period 2000-2003; and,
  - (d) The relationship between former County Council officers and user-groups.

The inclusion of this section within the report has been requested by Mr. Bowers and Cllr. Paul Duckett and generally applies to all three reports to be considered by the Development Management Committee.

#### **Evidence gathering**

- F.2. On 5<sup>th</sup> October 1992 Mrs. Izzard applied for the route of what is now Maulden Footpath No. 28 to be added to the Definitive Map and Statement by means of a modification order made under Section 53 of the Wildlife and Countryside Act 1981. She supplied 14 user evidence forms in support of her application, most of which were from relatives or friends. In early October 1994 Mrs. Zena Grant-Collier (a Modifications Officer at the former County Council) began to process Mrs. Izzard's application. On 18<sup>th</sup> October 1994 Mrs. Grant-Collier wrote to Mrs. Izzard to suggest that her application would be strengthened if she could find more evidence from users not connected to her family or to the land over which the footpath runs. Identifying weaknesses and suggesting how an applicant can address them, is part of the advisory service that a Surveying Authority is expected to provide to members of the public.
- F.3. Between October 1994 and May 1995, officers from the former County Council interviewed 14 people who had submitted user evidence forms and two others who had not. Mr. Bowers was not interviewed and neither was Mr. Cecil Sharp, the previous owner of the land in question. However, Mr. Harrold Brown, whose wife was Mr. Sharpe's niece, was interviewed by Mrs. Grant-Collier by telephone on 31<sup>st</sup> October 1994 (see Appendix C).
- F.4. In October 1994, Mr. Bowers instructed his solicitor to investigate whether previous land owners had granted permissive use of the footpath. On 31<sup>st</sup> October 1992 Mrs. Grant-Collier wrote to Mr. Bowers' solicitor requesting that any evidence Mr. Bowers might wish to be taken into consideration be

sent to her. Mr. Bowers' solicitor sent interviews in the form of Statutory Declarations made by Messrs. A. Bowers, C. Sharp, and H. Brown to Mrs. Grant-Collier on 2<sup>nd</sup> February 1995. Since copies of valid statements from these witnesses had already been provided, there was no need for the council to interview these witnesses itself as part of its own evidence gathering process.

- F.5. Mr. Bowers has alleged that former County Council officers wrote to witnesses to ask whether they knew other local residents prepared to give evidence to support Mrs. Izzard's application. Mr. Bowers clearly considers this level of proactive investigation inappropriate to an impartial investigation. However, the officer's role is to ensure that there is sufficient corroborative evidence to make a defensible modification order. The case officer concerned, Mrs. Grant-Collier, was obliged to consider all available evidence and, as such, interviewing other witnesses could help to achieve that aim. Should she have been consulted by Mr Bowers seeking advice on presenting his evidence for the non-existence of the path, she would have done the same. The officer was providing a service to the applicant in the same way that officers are now processing Mr. Bowers' application.
- F.6. Mr. Bowers has also criticised the former County Council for paying for solicitors to carry out home visits to obtain statutory declarations from three key witnesses (Mrs. Hilda Izzard – then aged 82, Mr. WJ Burgoyne – then aged 76, and Mrs. Florence Huckle – then aged 93) at the public expense. According to Mr. Martyn Brawn, the former County Council's Rights of Way Team Leader, the obtaining of statutory declarations from key witnesses for a public inquiry was standard practice at that time – although Mr. Bowers disputes this. Given the age of the witnesses, travelling to meet them seems a practical and reasonable course of action.
- F.7. None of the actions that Mr. Bowers has highlighted, and which are described above, indicate that the evidence of public use of Footpath No. 28 is either invalid or erroneous. Consequently, I consider that the former County Council's decision to make a Definitive Map modification order, and the later Inspector's decision to confirm that order, were both based on evidence acquired in a proper and appropriate manner.

#### **Former County Council's position during MBDC extinguishment orders**

- F.8. Mr. Bowers has also raised issues about the impact of the former County Council objecting to or not supporting the extinguishment orders made by the former Mid-Beds District Council at two public inquiries. These inquiries occurred after the 1995 modification order had been confirmed and consequently the position of the former County Council to the extinguishment orders is irrelevant to the existence of public rights along Footpath No. 28 as determined through the proper evaluation and independent inspection of user evidence at that time.
- F.9. The former County Council responded to the 1997 consultation for the Town and Country Planning Act 1990 ("TCP Act") extinguishment proposal by

stating on 31-12-1997 "...As this Order is sought to enable development to take place and as a suitable alternative route for this path would seem to exist within Bridleway No. 24, Maulden, this Authority would not wish to oppose the proposal...". The former County Council did not make a formal objection to the 1998 extinguishment order when it was made. However, 14 individuals and three user-groups did object, one of which was the Bedfordshire Rights of Way Association ("BRoWA").

- F.10. Mr. Mike Clarke of BRoWA sent a draft of his proof of evidence to Mr. Richard Hall, the former County Council's Community Paths Officer for Maulden, asking him if he had any suggestions or amendments prior to the 9 February 1999 public inquiry into the TCP Act extinguishment order. Although no response is kept on file, there are some changes in the submitted proof which could reflect the advice given to Mr. Clarke by Mr. Hall. The order was not made by the former County Council, and there was no formal County Council resolution to either support or object to it. It is my opinion that the Council's officers would be expected to offer advice to interested parties who wished to either support or object to the order.
- F.11. Mr. Richard Hall, the Community Paths Officer for the area, attended the ensuing public inquiry held on 9 February 1999 to represent the former County Council at the request of the former District Council's solicitor, Mrs. Morris in January 1999 and appeared as an interested party. The Inspector sought Mr. Hall's professional opinion on the order. Mr. Hall explained that the County Council would not oppose the extinguishment of the entire path. However, if confirmed in its current state, the order would only extinguish the southern half of the path, leaving the northern part as a dead-end section. Mr. Hall proposed that the order could be modified so that the path was diverted around Mr. Bowers' house. Diverting the path would allow the development to take place without the path being extinguished. The independent Inspector in coming to his decision concluded that the order should not be confirmed in its original form as it left a dead-end section of footpath and that the nearby Bridleway No. 24 was not a suitable alternative.
- F.12. In a joint briefing note to both former County Council and District Council, dated 13 July 2000, Mr. Martyn Brawn, the former County Council's Definitive Map Team Leader, stated that, "...as Highway Authority, the County Council would have little alternative but to object to an extinguishment order made by the District Council...". On 6 September 2000, the former District Council's Executive Committee voted that a public path extinguishment order should be made to extinguish Footpath No. 28.
- F.13. On 14 September 2000, the former County Council's Development Control Committee ("the DCC") heard a proposal to extinguish Footpath No. 28 and to compulsorily create an alternative route on land within Mr. Bowers' ownership. However, owing to the former District Council's decision eight days earlier, the DCC's official minutes recorded that whilst Members were minded to support the District Council's extinguishment order, and the County Council would not currently be minded to object to the order, the formal resolution was simply that the County Council's recommended creation and extinguishment

proposal should not be pursued. The DCC's minute is set out in full at the end of this appendix.

- F.14. The views of the DCC were conveyed to Mr. Bowers in a letter dated 15 September 2000 before the official minutes had been circulated and gave an optimistic appraisal of the outcome. In a letter of 13 June 2001, Mr. Martyn Brawn attempted to explain the committee minutes to Mr. Mike Clarke of BRoWA stating: "...My understanding at the time [of the meeting] was that the committee wished to support Mid Beds District Council's extinguishment order. This was not, however, the interpretation of the committee secretary. The minute... .. was approved and endorsed... So, the upshot must be that Bedfordshire County Council is not a formal supporter of the [MBDC] order, but that members of the committee with responsibility for footpath matters are sympathetic with the aims of the District Council order...".
- F.15. On 29 September 2000 the former Mid Beds District Council made an order to extinguish Footpath No. 28 under Section 118 of the Highways Act 1980. The 2000 order received objections from 15 individuals and four user-groups. The former County Council did not object to the order. The independent Inspector's decision letter for the order, dated 10 August 2001, identified the former County Council as not being a formal supporter of the order but recognised that its members were sympathetic to the aims of the order –as evidenced by the original 14 September 2000 DCC minute. The Inspector's reasons for not confirming the extinguishment order were based solely on the tests of Section 118 of the Highways Act. There is no evidence to suggest that the outcome would have been different had the former County Council formally supported the order or indeed formally objected to it. This observation was also expressed in the 6 December 2001 DCC minutes.
- F.16. Based on the decisions of the two independent Inspectors and the reports and minutes of various former County Council and District Council committees I can see no evidence that any officers acted improperly during the course of the two District Council extinguishment orders.

#### **Member – Officer involvement in DCC decisions**

- F.17. Mr. Bowers has queried the role of officers in advising Members of the former County Council's Development Control Committee about their liabilities. I believe this refers to advice about their legal responsibilities to act impartially and in accordance with legislation government guidance and the consequences to them personally if they did not which was given to them at a closed meeting on 7 March 2002 (see below).
- F.18. Following the submission of representations from user-groups and a petition by those people who stated they would use Footpath No. 28 if able to do so, on 19 October 2000, the former County Council's Full Council resolved that the DCC should look again at its 14 September 2000 decision (see above at Section F.13). On 26 October 2000 the DCC did so, and again resolved not to create an alternative route to Footpath No. 28.

- F.19. In response to a complaint to the Local Government Ombudsman (“LGO”) by a local resident, the Chief Executive of the former County Council, Mr. David Bell, stated in a letter to the LGO, dated 31 October 2000, that his council believed (at that time) that the bridleway was a suitable alternative route and, as a result, the footpath was no longer needed for public use. It should be noted that since 2000 there has been an increase in the number of housing developments to the east of Footpath No. 28, the residents of which are likely to use the footpath in preference to the more distant bridleway.
- F.20. On 6 December 2001 the former County Council’s DCC resolved that Footpath No. 28 should be extinguished and a new alternative route created to the east along the boundary of a proposed new development (Trilly Fields). However it transpired that there were planning conditions specifically prohibiting any link from the new development into Maulden Wood, which was the goal of the alternative footpath. On 24 January 2002 the DCC resolved to seek the extinguishment of Footpath No. 28 and to separately investigate whether an alternative could be created – the two actions being approached separately
- F.21. Following the 24 January 2002 DCC resolution, the former County Council received two complaints from local residents. On 7 March 2002 the DCC met in private to hear a report by the County Solicitor and Strategic Director (Environment) to review the recent decisions of the committee in relation to Footpath No. 28. The committee was asked to consider any steps it wished to take in the light of the complaints received, the guidance of the County Solicitor, and the decisions of the Inspectors not to confirm the previous two District Council extinguishment orders. The committee resolved: that no further action should be taken on the proposal to make an extinguishment order for Footpath No. 28 having regard to the legal advice that there was not sufficient basis to make such an order. They also proposed that officers should present proposals for an alternative path to a future sitting of the committee.
- F.22. On 31 October 2002 the former County Council’s DCC heard a report proposing five alternative routes within Mr. Bowers’ property. Members resolved to defer consideration of the proposals whilst both the former County and District Councils investigated options for works to make Bridleway No. 24 suitable as an alternative route to the footpath. At the 6 March 2003 sitting of the DCC officers put forward four options to improve Bridleway No. 24 to make it more suitable for pedestrian passage. The committee resolved to approve works to improve the bridleway by providing three pedestrian refuges which would cost approximately £15,000.
- F.23. Following further complaints from local residents and from the Open Spaces Society, the former County Council took advice from its Head of Internal Audit and from independent Counsel. The auditor’s view was that expenditure to upgrade Bridleway No. 24 would not be appropriate as both the Access & Partnerships Manager and the Council’s Engineer thought the work unnecessary and that the expenditure was solely to assist with the possible extinguishment of the nearby footpath. Counsel’s Opinion was that the former

County Council could not legally seek to extinguish Footpath No. 28, or incur expenditure on improving Bridleway No. 24, or let the footpath remain obstructed. A report including these findings was put to the 27 November sitting of the former County Council's DCC. The report also made it clear there was no budget for the proposed engineering works. The report recommended that the earlier 6 March 2003 DCC resolution be revoked and that the re-routing of Footpath No. 28 within the curtilage of Mr. Bowers' property be pursued. The committee resolved to revoke its early decision and to hear officers' proposals for a diversion of the footpath within the boundaries of Mr. Bowers' property at a later date.

- F.24. On 4 March 2004 the former County Council's DCC heard a report by officers which gave five alternative routes for a diversion of Footpath No. within Mr. Bowers' property boundaries. The committee resolved that a public path diversion order should be made to divert the path to the western side of Mr. Bowers' house. This order was eventually made on 16 July 2004 and subsequently confirmed after a public inquiry on 6 June 2006.

### **The relationship between former County Council officers and user-groups**

- F.25. The former County Council and Central Bedfordshire Council both work closely with user-groups, such as the British Horse Society and Ramblers, as well as with preservation societies, such as the Open Spaces Society and the Chiltern Society. The Council works with these organisations on public path orders and the Outdoor Access Improvement Plan, as well as on a wide range of local and strategic rights of way issues. The Council therefore has well established working relationships with the local area officers of these organisations. The Council have also worked with other local rights of way organisations such as BRoWA and the East Herts Footpath Society which act as local pressure groups seeking the enhancement of (generally) pedestrian rights of way.
- F.26. BRoWA in particular has been a very active local group . Their representative, Mr. Clarke, has either independently, or on behalf of BRoWA, objected to approximately 90%of the public path orders that the former County Council and subsequently Central Bedfordshire Council have made since the mid 1990s. Mr. Clarke was the informal Open Spaces Society representative for Bedfordshire, and has formally appeared (against the Council and for the Society) at a number of public hearings and inquiries over the years.
- F.27. Both councils have therefore learnt how best to manage the contradictory issues arising from user-groups and preservation societies being allies in the provision of access whilst also being opponents when legal orders seek to alter the public rights of way network. In such a role it is important for the officers concerned to build up close working relationships with the individual representatives concerned. The art of such a relationship is to remain professional in both formal and informal dealings, regardless of whether there is a shared outcome.
- F.28. Ramblers (formerly the Ramblers Association), BRoWA, and the Open Spaces

Society all supported the provision of extra public access provided by the former County Council's 1995 Definitive Map modification order adding Footpath No. 28 to the Definitive Map and Statement. Once on the map, these organisations have subsequently opposed further orders seeking to extinguish the newly recorded footpath. Mr. Clarke of BRoWA sought advice (detailed above at Section F.10) on how best to oppose the TCP Act order. The Open Spaces Society threatened to judicially review any decision by the former County Council to make a third extinguishment order for Footpath No. 28. At this time they opposed the Councils proposal to extinguish the path. All three of these organisations have stated their continued opposition to Mr. Bowers' recent applications to extinguish or delete the footpath and currently support the officer's recommendations to the Committee.

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### **Approved Minutes of the former County Council's Development Control Committee meeting of 14 September 2000**

#### **00/dc/86 PROPOSED PUBLIC PATH CREATION ORDER AND EXTINGUISHMENT ORDER – HIGHWAYS ACT 1980, SECTIONS 26 AND 118 - MAULDEN**

The Committee considered a report of the Head of Environmental Services which sought approval to the making of concurrent Council generated public path orders to resolve an anomaly on the Definitive Map and Statement of public rights of way.

Councillor Golby declared his interest in this matter and left the meeting during its consideration.

The Committee had visited the site at Maulden earlier in the day.

Members received a detailed account of the background to the situation relating to public Footpath 28 Maulden which ran between Bridleway 24 at Hall End southwards to meet Clophill Road crossing, for most of its length, the residential property and adjoining land, 123b Clophill Road, owned by Mr Bowers.

The footpath was permanently obstructed by the house itself, constructed in 1995/96 close to its southern end and by a wall constructed at the end of it where it met Clophill Road.

Members were informed that the status and position of Footpath 28 were not legally in doubt although its existence was disputed by Mr Bowers, Maulden Parish Council and the local District Councillor.

The report set out, in detail, the history of the dispute and described the various legal considerations, consultations with landowners, local councils, representative user groups and the statutory undertakers.

Councillor Ivey, the local Member for the area, described the dispute as a very unhappy episode for all concerned which had seriously affected

relationships in that part of the village. He reported that the nearby Bridleway 24 running from Clophill Road to Maulden Wood was considered by most to be a suitable alternative, supported by Mr Bowers, Maulden Parish Council and Mid Bedfordshire District Council.

Some Members believed that Footpath No. 28 should be extinguished given that the bridleway was so close to the footpath and indeed the two met at a point south of Maulden Wood.

Concerns were expressed, however, that if Footpath 28 were to be diverted within Mr Bowers' land to allow its use, there could be safety issues where the path would emerge in Clophill Road.

District Councillor Mrs Turner commented that if a new footpath were to be created as proposed with an alternative route through Mr Bowers' land, there would still be a possible conflict between walkers, horses and vehicles at the northern end where it would meet Bridleway 24. She stressed that the bridleway was a thoroughly suitable alternative given the very difficult circumstances being faced.

A number of Members indicated their view that the most appropriate action would be for Footpath 28 to be formally extinguished.

The County Solicitor was asked for his guidance on the proposal and drew attention to the legal considerations set out in the report, reminding Members that the merits of the proposal to extinguish Footpath 28 and create a new Footpath 30 were for the Committee to determine.

Members were informed that Mid Bedfordshire District Council was already in the process of making an order to extinguish Footpath 28 and, as they were minded to support the extinguishment, the Committee agreed to take no further action on the submitted proposal. The order would, of course, have to be the subject of the necessary consultations, but on the basis of the resolution set out below, the County Council would not currently be minded to object to such an order.

**RESOLVED:**

That, in the light of the proposal to make an order by Mid Bedfordshire District Council to extinguish Footpath 28, Maulden, the proposal as submitted for the County Council to create a new public footpath between Bridleway 24 and Clophill Road, Maulden as shown at Appendix 5 to the report and to extinguish Footpath 28, Maulden as shown at appendix 6 be not pursued at the present time.