

**Meeting:** Development Management Committee

**Date:** 13 February 2013

**Subject:** The consideration of an application to extinguish Maulden Footpath No. 28 under Section 118 of the Highways Act 1980

**Report of:** Head of Service for Transport Strategy and Countryside Services

**Summary:** The report examines the application to extinguish Maulden Footpath No. 28 in light of evidence of recent use and the legislation contained within the Highways Act 1980. Members are asked to come to a view on whether the application should be approved or refused.

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**Advising Officer:** Trevor Saunders, Assistant Director of Planning

**Contact Officer:** Adam Maciejewski – Senior Definitive Map Officer -  
Countryside Access Team - 0300 300 6530

**Public/Exempt:** Public

**Wards Affected:** Ampthill ward

**Function of:** Council

## CORPORATE IMPLICATIONS

### Council Priorities:

This proposal meets the following Council priorities:

- Creating safer communities – by providing a public right of way with a safe crossing point on Clophill Road
- Promoting healthier lifestyles by encouraging use of the countryside by providing easy access to the countryside from local residential developments.

### Financial:

1. The use of the Highways Act 1980 to make public path orders is a discretionary power of the Council and consequently regulations permit certain costs to be recovered from the applicant. These costs relate to: administration and officer time, the cost of advertising the making and confirmation of an order, and the costs of any works related to the order. Where the Council does not make an order, any administration costs already incurred are borne by the authority. Should the committee resolve to make an order however, the costs are envisaged to total approximately £2700. However, as Mr. Bowers' application is very old we have honoured the previous charging rate of £19/hr rather than the current rate of £43/hr. Consequently the applicant is likely to pay around £1500 if an order is made and confirmed, with the remainder (about £1200) being borne by the Council.

2. Should the committee approve the making of an extinguishment order it is highly probable that it will receive objections. If objections are received and not withdrawn, the ensuing Council administration costs incurred in forwarding the case to the Secretary of State for Environment, Food, and Rural Affairs for confirmation would be borne by the Council. The administrative cost of defending an opposed order is unlikely to exceed £1000. However, the cost of legal advice and possible external advocacy in defending the order could exceed £4000. These costs would again be borne by the Council and met from existing budget provision; thus reducing the funding available for other projects. If an order was made and not confirmed by the Secretary of State, the applicant would be liable to pay all the Council's administration and advertising costs up to when objections were received – possibly about £1250 as this would not include the cost of advertising the order's confirmation (about £200).

**Legal:**

3. The Council can use the Highways Act 1980 to make a public path order to extinguish a public right of way where it is expedient to do so and the Council is satisfied that the right of way is not needed for public use and would not be used if it were not extinguished. If an extinguishment order is made, notice of this 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 order itself and would have to decide whether or not to forward it to the Secretary of State who appoints an independent Inspector to determine whether the order should be confirmed or not. Given the history of this footpath it is likely that if the Council forwarded it to the Secretary of State, an opposed order would either be heard at a public hearing or inquiry.
4. Independent legal advice for the Council indicates that the decisions of the Inspectors to not confirm the previous two extinguishment orders will be highly material to the consideration as to whether the Council should make a further extinguishment order.
5. Should an order be made to extinguish the footpath, there is also a risk that an application could be lodged to have the Council's decision judicially reviewed. This is unlikely to occur until the normal statutory route of objection and public hearing or inquiry has been exhausted. The likely ground for such an application would be that the Council has made an order for an outcome which has already been unsuccessfully sought twice by a predecessor authority without any significant change in local circumstances.

**Risk Management:**

6. The existence of Maulden Footpath No. 28 has been disputed by the applicant, who for 20 years has been the owner of the land over which the majority of the footpath runs. The actions of the former County Council and Mid-Beds District Council, in dealing with this footpath, have resulted in at least seven complaints to the Local Government Ombudsman ("LGO") by not only the supporters of any attempt to extinguish the footpath, but also by those

seeking to retain it. None of these complaints of maladministration by either Council were upheld.

7. Mr. Bowers' application to extinguish Maulden Footpath No. 28 has the support of the Police<sup>1</sup>, Maulden Parish Council, the local ward members, and local MP, Mrs. Nadine Dorries. The application does not have the support of local and national user-groups however, which treat this long-running case as a *cause célèbre*. Central Bedfordshire Council, as the Highway Authority, has a duty to act impartially and to determine the application based on the legislative tests of the Highways Act 1980. In doing so it can consider local views as to whether the footpath is needed.
8. The long-standing dispute between the various parties has so far resulted in five legal orders, three public inquiries, and three prosecutions. Consequently, the Council's decision is likely to receive significant press interest (the case was keenly followed by the Open Spaces Society who have given this matter national coverage). In summary, the key risks to the Council are:
  - Reputational risks,
  - Risk of failure to discharge statutory responsibilities and legislative issues,
  - Risk of further challenge/appeal/legal action/judicial review, or risk of legal action being taken against officers of the former County Council or Central Bedfordshire Council.

#### **Staffing (including Trades Unions):**

9. Not Applicable.

#### **Equalities/Human Rights:**

10. The application by Mr. Bowers seeks to extinguish the public right of way (Footpath No. 28) which crosses Mr. Bowers' property between Clophill Road and Bridleway No. 24. The footpath was originally added to the Definitive Map and Statement, which is the Council's legal record of such rights, in 1997 following a public inquiry into a 1995 Definitive Map Modification Order. This order formally recognised the existence of a previously dedicated public right. The footpath has had its legal line subsequently changed twice in response to building works on the land. The footpath passes along the eastern side of the boundary between Mr. Bowers and his elderly neighbour, Mrs. McParlin. Whilst most of the fence and hedge between Mr. Bowers and Mrs. McParlin is at least 1.8 metres high, there is a short section in front of several of Mrs. McParlin's bungalow's windows which is lower allowing walkers to look into her kitchen and bedroom.
11. Article 8 of the Human Rights Act 1998 relates to the right to respect for private and family life. Section 2 of Article 8 of the Act states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the

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<sup>1</sup> The Police's national Secured by Design guidelines state that "public footpaths should not... ..provide access to gardens, rear yards, or dwellings as these have been proven to generate crime..." and so, by default, the Police support any extinguishment of a public right of way through domestic property.

interests of (amongst other things) the protection of the rights and freedoms of others. Whilst the making of an extinguishment order would improve the privacy of Mrs. McParlin and possibly improve the security of both her and Mr. Bowers, these improvements must be weighed against the loss of a public right.

12. The 1995 Definitive Map Modification Order which added Footpath No. 28 to the Definitive Map and Statement would have been exempted from the restrictions of the later Human Rights Act as the decision to make the order was made on evidence of the pre-existence of public rights. The decision by the Development Management Committee not to make a public path extinguishment order would be in accordance with the Council's Rights of Way Applications policy as well as with the Council's duty to protect and assert the public's right to use this right of way.

**Public Health**

13. Not applicable.

**Community Safety:**

14. The report proposes that Maulden Footpath No. 28 be retained from Clophill Road to its junction with Bridleway No. 24. Use of the footpath by local residents removes the requirement for pedestrians to use a bridleway which has occasional equestrian, cycle, and vehicular traffic. Footpath No. 28 has a junction with Clophill Road, Maulden. The road is straight with a footway on the opposite side. Were the footpath to be deleted, walkers would either have to walk in the road for some 43 metres between points A -C or to walk along the footway on the southern side of Clophill Road to cross at the nearby three-way road junction. The Council's Senior Traffic and Safety Engineer has appraised both the current and alternative routes on Clophill Road and considers both to have similar low levels of risk – however, crossing away from the road junction would help to minimise any inherent risk. A road-side sign has also been erected to draw attention to the footpath. Walkers using Footpath No. 28 are constrained within a narrow path between 1.1 and 1.6 metres wide and so would have little space to avoid unauthorised cyclists or an aggressive dog. A gate has been installed at the request of the land owner, Mr. Bowers, to deter cycle use of the footpath. By contrast, Bridleway No. 24 is wider with a surfaced width of between 2.5 and 3.5 metres (measured verge-verge) but pedestrian use is shared with cyclists, equestrians, and motor vehicles. No incidents have been reported on either path.

**Sustainability:**

15. Not Applicable.

**Procurement:**

16. Not applicable.

## **RECOMMENDATION(S):**

### **The Committee is asked to:**

- 1. Refuse the application by Mr. Alan Bowers to make a Public Path Order under Section 118 of the Highways Act 1980 to extinguish Maulden Footpath No. 28 between points A-B on the grounds that:**
  - a. The footpath provides a pedestrian-only route from the new developments to the south of Clophill Road and from Trilley Fields to the bridleway linking into Maulden Woods and is therefore considered needed.**
  - b. There is evidence demonstrating that the footpath is used by members of the public and it is likely to continue to be used if not extinguished.**
  - c. The land occupied by the footpath and the alternative route has not undergone significant change for the Council to disregard the earlier decisions by independent Inspectors to not confirm the two previous orders seeking to extinguish the footpath.**

## **Introduction**

17. In 1989 the applicant, Mr. Alan Bowers purchased a plot of land off Clophill Road, Maulden. His fencing of the land and locking of the access gate resulted in a neighbour applying to the former County Council for the Definitive Map and Statement to be modified by the addition of public footpath.
18. In September 1995 the former County Council made a Definitive Map Modification Order to add Maulden Footpath No. 28 to the Definitive Map and Statement, based upon evidence of public use of the route. Details of the evidence and actions of the former County Council are given in a separate report within the agenda which addresses Mr. Bowers' parallel application to delete the footpath. By this time, Mr. Bowers had already applied for and received planning consent to build his new house, No.123b Clophill Road, over the 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. The 1995 order was confirmed in 1997 – by which time Mr. Bowers had almost finished building his new house.
19. Mr. Bowers was advised by the former County Council to apply to the former Mid-Beds District Council for an extinguishment order. In the end, the former District Council made two extinguishment orders, first under the Town and Country Planning Act 1990 (“the TCP Act”) in 1995, and then under the Highways Act 1980 in 2000. Both orders to extinguish Footpath No. 28 were objected to by a small number of local residents and by user-groups resulting in two public inquiries. The former County Council appeared at the first (1990 Act) inquiry as an interested party and asked that the extinguishment order be modified so that a footpath could be retained within Mr. Bowers' property boundaries. Neither order was ultimately confirmed by the independent Inspectors appointed by the Secretary of State for Environment, Food, and

Rural Affairs for the reasons discussed at Section 29 below.

20. Following legal advice, the former County Council made a public path diversion order under Section 119 of the Highways Act in July 2004 to divert Footpath No. 28 out of Mr. Bowers' new house onto a route down the western side of his property. Mr. Bowers objected to the order. The Council received 180 other objections. 175 of the responses were copies of a typed proforma adding no individual perspective. Upon contacting these objectors, 16 either claimed they were fraudulent or withdrew their objection when the purpose of the diversion order was explained to them. Contacting objectors is part of the process of preparing an order for forwarding to the Secretary of State for confirmation. The Council has a responsibility to determine the validity and authenticity of objections and to try and seek their withdrawal if possible in accordance with the Defra Rights of Way Circular 1/09 Para. 10.6 "...Once an order has been advertised, local authorities are expected to make every effort to resolve objections and to secure their withdrawal. ...". Consequently all objectors, including the Parish Council, were written to in accordance with this guidance. Overall, 164 people maintained their objections; 6 of whom were called as witnesses against the 2004 Diversion Order at the ensuing public inquiry. The 2004 Diversion Order was subsequently confirmed in June 2006.
21. In September 2004 Mr. Bowers submitted an application to extinguish Footpath No. 28 either under Section 118 of the Highways Act or at the Magistrates' Court under Section 116. The former County Council decided that the applications should not be processed until the (as then) current 2004 public path diversion order was completed and the route was opened up and made available for public use. The footpath was finally opened up and made available in 2009 following the prosecution of Mr. Bowers' in the Magistrates' Court; this was begun by the former County Council and concluded by its successor Central Bedfordshire Council.
22. Following the removal of a brick storage building (known variously as "the Hurdle Barn" or "Pound") next to the footpath in 2008, the line of the 2004 diversion order was modified by a variation order made and confirmed in 2010.
23. The current route of Maulden Footpath No. 28 starts at the south-western corner of 123b Clophill Road at the roadside and proceeds due north along an unsurfaced strip approximately 1.1 - 1.6 metres wide (see photographs at Appendix C). The footpath is fenced-off to either side with (generally) 6 feet high panel fencing where it passes between the front gardens, houses, and main rear gardens of Nos. 123 and 123b. To the north of the more formal rear gardens of Nos. 123 and 123b the land is set to paddock. Here the footpath continues due north with a grassed surface between post and rail fencing until a gate where the footpath then crosses the edge of a small parking area to its junction with Bridleway No. 24. This gate was installed after repeated requests by Mr. Bowers for a structure to deter cyclists from using the path (see letter at Appendix D). Mr. Bowers modified his request so that the structure would be sited to help prevent children running into Clophill Road. However, The Council's Safety Officer did not identify the necessity and, as the requested roadside location proved unsuitable, the gate was eventually installed at the junction with the bridleway to fulfil the original purpose.

The proposed extinguishment of Maulden Footpath No. 28.

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24. The level of public use on Footpath No. 28 has been monitored electronically between September 2010 and September 2011 as part of the condition of processing Mr. Bowers' application. Despite technical problems with the equipment which interrupted and curtailed the monitoring period, the data shows that the footpath was used on average 9.8 times per day over a 363 day period, see B.2 - B.4 at Appendix B.
25. Following Mr. Bowers' two unsuccessful attempts to have Footpath No. 28 extinguished, officers at the former County Council suggested that he apply to try and get the footpath deleted by means of a definitive map modification order; the grounds of the application being that the original 1996 modification order failed to consider evidence showing the footpath did not exist. Mr. Bowers has also applied to have Footpath No. 28 stopped up at the Magistrates' Court. Both these applications are the subject of two other agenda items put to this sitting of the Development Management Committee.

### **Legal and policy considerations**

26. 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. Section 118 of the Highways Act applies to the extinguishment of such rights.
27. 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 to create, divert, or extinguish a public right of way.
28. Central Bedfordshire Council's Rights of Way Policy on Applications does not restrict the consideration of Mr. Bowers' application now that the required monitoring period has expired.
29. The extinguishment of Footpath No. 28 has already been addressed twice at public inquiry. The conclusions of the first Inspector in not confirming the 1995 order made under the TCP Act were: the use of Bridleway No. 24 as an alternative route to the footpath was not an acceptable alternative to retaining the footpath, and that the leaving of a dead-end path had no value (the extinguishment only affected the southern half of the footpath). The conclusions of the second Inspector in not confirming the 2000 order made under the Highways Act were essentially three-fold:
  - The fact the footpath was obstructed by the newly built house was not a consideration as the house could be removed.
  - The representations made at the inquiry indicated that "...the footpath would be likely to be used, and to a significant extent, by the public..." if not obstructed.
  - That the nearby Bridleway No. 24 was not a suitable alternative route as it could pose problems of conflict of shared use, and had been subject to flash flooding.
30. The legislative tests for extinguishing a public right of way are detailed in

Appendix B. Essentially a public path extinguishment order can only be made if the Council is satisfied that it is expedient for the footpath to be extinguished because it is not needed for public use. The order cannot be confirmed unless the Council is satisfied that it is expedient to do so, having regard as to whether the path in question would be likely to be used by the public if it was not extinguished. Any temporary circumstances preventing or diminishing the use of the path should be disregarded when evaluating the use of the route. The Council also needs to have regard to the effect of the extinguishment on the land served by it and can consider whether there is a suitable alternative route available.

31. Footpath No. 28 has been electronically monitored for a total of 363 days between 10-9-2010 and 20-9-2011. During this period the average level of use was 9.8 trigger events per day (a total of 3540). A trigger event is when a person passes along the path past the installed counter. The counter cannot distinguish between members of the public using the right of way and Mr. Bowers or his guests walking along the path. The electronic monitoring indicates that Footpath No. 28 is used to a significant degree. Consequently it would be difficult to argue that it is not needed for public use. Were the footpath not extinguished, it is very likely that public use of a similar level would continue in the future.
32. The extinguishment of the Footpath No. 28 would remove public rights from Mr. Bowers' property and from the small parking area at the northern end of the footpath owned by Mr. & Mrs Tebbutt of 125a Clophill Road . It would also prevent members of the public walking past the windows of the neighbouring bungalow belonging to Mrs. McParlin. The land at either end of the footpath can be reached by use of the nearby Bridleway No. 24.
33. When coming to a decision on whether to make an order the Council also has to have regard to any material effects of a Rights of Way Improvement Plan and to the effect of the closure on agriculture, equiculture, forestry, and the preservation of flora, fauna, and physiographical features. The line of Footpath No. 28 runs between two houses and then within a fenced off strip the length of Mr. Bowers' garden. The extinguishment of the footpath would not negatively impact on any of the aspects listed above that need to be considered. The Council's Outdoor Access Improvement Plan is currently being re-written. Until this is formally adopted, consideration of the old plan is required. The proposed extinguishment would not detrimentally affect any of the aims of the old or new plan.

### **Alternative routes**

34. The proposed use of Bridleway No. 24 as an alternative to Footpath No. 28 has been addressed at both the public inquiries held for the previous two extinguishment orders made by the former District Council. The independent Inspectors appointed by the Secretary of State for both orders decided not to confirm the extinguishment orders, citing that the bridleway was not a suitable alternative route to the footpath as being one reason for not doing so.
35. Bridleway No. 24 starts at the three-way junction of Clophill Road with the A507 spur at point C at Appendix A (see photographs at Appendix C). The



bridleway, which has some degree of surface dressing, is approximately 2.5 - 3.5 metres wide with hedges to either side at its southern end, becoming enclosed by post and rail fencing for its northern half. A ditch runs along the western edge of the bridleway. This has been piped in three locations along the southern half of the bridleway. The piped areas tend to be overgrown and currently have spoil from ditch clearance dumped on them and are not currently suitable as pedestrian refuges. Approximately 73 metres north of point C a gate in the bridleway and associated turning area widens the bridleway at this point to 6.5 metres. The bridleway provides vehicular access to a small number of properties but appears to not be intensively trafficked. Any walkers approaching from the A507 would also probably use the bridleway in preference due to its proximity.

36. Walkers accessing Maulden Woods from the west would probably approach using the footway on the south side of Clophill Road (there is no northern footway). They would then have the opportunity of crossing Clophill Road at the corner of the junction at the dropped kerb to access the tarmaced entrance to the bridleway. Walkers wishing to use the footpath in preference to the bridleway would probably cross the A507 spur on the corner at the dropped kerb and then continue along the southern footway of Clophill Road until opposite Footpath No. 28 before crossing to use the footpath. Additionally, only pedestrians are permitted on the footpath whereas walkers may encounter cyclists, horse riders and motor vehicles on the bridleway.
37. Walkers accessing Maulden Woods from the east (including the Headley Way estate, the adjoining Pennyfathers Close, and Beeches developments, and the newer Trilley Fields development – see map at B.10 at Appendix B) would probably approach using the footway on the south side of Clophill Road until opposite Footpath No. 28 before crossing on this straight section of road to use the footpath. To access Bridleway No. 24 walkers would need to either cross to the north side of Clophill Road and walk into oncoming traffic for about 35 metres until reaching the grassed area adjacent to Bridleway No. 24 or, more likely, carry on walking westwards along the southern footway of Clophill Road to cross the road at the dropped kerb approximately 10 metres before the junction and then to walk over the grassed area adjacent to the bridleway. Additionally, only pedestrians are permitted on the footpath whereas walkers may encounter cyclists, horse riders and motor vehicles on the bridleway.
38. Mr. Bowers has argued that use of Footpath No. 28 by users of the new estates should be disregarded as they did not use the paths during the time of its deemed dedication (1936-1956) and that use of a public right of way is for the public at large – not just an estate. However, the footpath is a public right of way and so the effect of it being stopped up on the nearby new estates is a material consideration as these estates (and the surrounding houses) are where the public most likely to use the footpath would live.
39. The Council's Senior Traffic and Safety Engineer, Mr. Paul Salmon, has looked at the approaches to the junctions of the bridleway and footpath with Clophill Road and at the utilisation of the southern footway to the dropped kerb near the three-way road junction. He considers that the current and alternative routes along/across Clophill Road have a similar low level of risk. Following concerns raised by Mr. Bowers as to the safety of pedestrians exiting Footpath

The proposed extinguishment of Maulden Footpath No. 28.

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No. 28 onto the road, Mr. Salmon also looked at this aspect. Following a site visit, he concluded "...[the footpath has] at least a metre of footpath which is clear from obstruction before reaching Clophill Road, thus allowing clear visibility of traffic in both directions.....it is felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..To mitigate the risk of anyone inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance/exit of the [footpath] [This has been done]. In addition and to support this, pedestrian warning signs may be erected on Clophill Road to alert motorists that Non Motorised Users may be entering/exiting the footpath. It is not felt necessary that at this stage any type of barrier be installed on the footpath...". However, at Mr. Bowers' insistence, and after writing repeatedly to Central Bedfordshire Council, a gate was installed on the footpath principally to deter/prevent cyclists from using it. However, this was eventually installed close to the junction of the footpath with Bridleway No. 24 owing to problems digging the footings of the gate at the roadside.

40. Bridleway No. 24 could be utilised as an alternative route – and may already be used in preference by walkers approaching from the west. However, residents of the three developments to the south side of Clophill Road and Trilley Fields on the northern side are likely to use Footpath No. 28 as their primary access route to Maulden Woods; in doing so, they would benefit from both its proximity and vehicle-free character. However, in accordance with the *Bernstein* and *Barry Stewart* cases (see Appendix B), I consider that members of the public from these developments are unlikely to be significantly disadvantaged by having to use the nearby Bridleway No. 24. This view is supported by the former County Council's Chief Executive, Mr. David Bell, who, in response to a complaint to the Local Government Ombudsman ("LGO") by a local resident, stated in a letter to the LGO, dated 31-10-2000, 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. However, 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.
41. Electronic monitoring has shown that Footpath No. 28 is used to a significant extent and would continue to be used. The Council has to consider, in the light of this evidence (accepting the likelihood that use of the bridleway would not significantly disadvantage potential users), whether it is expedient for an order to be made to extinguish the footpath. In my view the impact of stopping up the footpath would not be significantly detrimental, however there is a strong presumption in favour of not doing so based on the decisions of the two independent Inspectors who heard the 1995 TCP Act extinguishment order and the 2000 Highways Act extinguishment order. In both cases the Inspectors, in determining not to confirm the extinguishment of Footpath No. 28, concluded that Bridleway No. 24 was not a suitable alternative to the footpath.
42. The Council has not been made aware of any significant alterations to the bridleway to make the above conclusions redundant, or to warrant the Council considering it expedient to make a public path order to extinguish the footpath

– especially now that monitoring has clearly shown the footpath is used. Mr. Bowers has stated that works have improved the bridleway by piping the ditch and creating pedestrian refuges. The Council has no record of these works and whilst it is evident that three sections of the ditch alongside the southern half of the bridleway have been piped, these areas are covered by vegetation and spoil from recent ditch clearance works and consequently do not currently form suitable pedestrian refuges. Similar works were proposed in October 2002 but these were never carried out according to Council records. Some minor works to surfacing and to prevent flooding have also been carried out opposite and to the east of No. 125a Clophill Road near point B at Appendix A. Furthermore, since the 2000 extinguishment order was made, the new Pennyfathers, Beeches, and Trilley Fields developments which all lie to the east of Footpath No. 28 have provided a new local source of users of the footpath requiring access to Maulden Woods (see map at B.10 at Appendix B). This is especially so as the planning constraints for the Trilley Fields development prohibited a direct link from the estate into the adjoining woods.

## Consultations

43. In January 2012, Central Bedfordshire Council simultaneously consulted on all three of Mr. Bowers' applications. Several of the responses received gave a broad response rather than concentrating on those aspects relevant to each application. In such cases, those aspects of a consultees' response which reflect their general views are given below.
44. Mr. Bowers, the applicant, has commented on a draft version of this report. Where relevant, Mr. Bowers' comments have been included in the body of this report and its appendices.
45. Mr. & Mrs. Tebbutt of 125a Clophill Road own a small parking area on the southern side of Bridleway No. 24 which is crossed by the northern-most 10 metres of Footpath No. 28. They were consulted on the proposed extinguishment in November 2012. Mr. Tebbutt responded on 16-11-2012 stating "...I have no real strong view in favour of the footpath remaining as it was not in existence when we moved to this address. Very few people use the footpath as in the summer it is over grown with nettles - my two boys generally end up walking down the [bridleway] as do any walkers who are not aware of its existence or they are wearing shorts. In my view ( taking aside local views) - the footpath is un maintained and pointless... ..don't get me wrong I will be glad to see the end of the footpath...". Mr. Tebbutt added to his comments on 19-11-2012, stating:"...Your counter would be correct in saying my kids use it for school runs but they are perfectly capable of walking down the [bridleway] if the nettles are out of hand or if the path is extinguished. I really have no view either way on the up keep of it or indeed its existence or non existence as the case may be - my comments were merely an observation that it is really a couple of walkers and my kids using it which really deems it pointless . I hope this information is of some help in bringing this to a conclusion - a conclusion which really does not effect us at 125A which ever way it goes...".
46. In response,- the former County Council made a Definitive Map Modification Order in 1995 to record the existence of the footpath based on a presumed

dedication in potentially 1936. However, the path has not been usable since before 1995 until a 2009 Magistrates' Court order forced Mr. Bowers to remove a number of obstructions on the footpath. The footpath is cut twice a year (May and September) through the Council's Seasonal Vegetation Clearance programme ("SVC"). Unseasonable weather and teething issues with new SVC contractors has lead to increased weed growth on many paths this year. Mr. Tebbutt clearly is not overly concerned about the fate of the footpath. Whilst he considers that the connecting bridleway is an acceptable alternative to the footpath, he also acknowledges that his children use the footpath as part of their journey to school.

47. Mrs. Sylvia McParlin of No. 123 Clophill Road, who's property abuts Footpath No. 28, was consulted and wrote a letter dated 14-2-2012 in support of the extinguishment, stating "...The access to the path is on a main road whereby you step straight out onto the main road, as no path exists on that side. Cars stop over the entrance thus blocking the view of oncoming traffic... A perfectly good bridleway not 50 mtrs [sic] with good access has always been used in the past..."
48. Mr. & Mrs. Fenton of No. 121 Clophill Road, whose property abuts the northern half of Footpath No. 28 has been consulted but has not yet responded.
49. Maulden Parish Council was consulted and responded on 4-2-2012 stating that it "...feels very strongly that this footpath should be extinguished on the grounds that it is unnecessary and supports Mr. Bowers and your Council in an application to the Magistrates' Court for an extinguishment order..."
50. The three local ward members were consulted. Cllr. Blair responded stating "...I can only say that on the information I have been given, I have to agree with Mr Bowers that the original DMMO should never have been made, since a public right of way never previously existed. By various means, it appears that a simple work access route was somehow turned into a footpath based upon very questionable evidence – clearly a situation acknowledged by Mid-Beds District Council when they made their subsequently thwarted extinguishment orders...". From this and other comments it appears Cllr. Blair is in support of a resolution in Mr. Bowers' favour.
51. Cllr. Smith responded on 31-1-2012, stating "...Having been at Maulden's Parish Council Meeting last Monday (attended by Mr Bowers) I support the Parish Council's view that the footpath should be extinguished. I would hope that the Development Control Committee would also endorse this view..."
52. Cllr. Duckett responded on 13-1-2012, stating "...I wholly support this deletion as it is a path that goes nowhere and serves no purpose...". From this and from meetings with Cllr. Duckett it is clear that he supports an application to extinguish the footpath.
53. In response – the evidence used by the former County Council to deem that a public right of way existed over Mr. Bowers' land was scrutinised and validated by the former County Council's Definitive Map Officers, by members of the former County Council's Rights of Way Sub-committee, and by an independent Inspector appointed by the Secretary of State for the Environment. In addition,

data from the installed people counters indicate that the footpath is used on a frequent basis. Whilst the origin of most of these users with the exception of the Tebbutt family (see Section 45 above) cannot be established from the counter data, it is plausible that the new developments to the south and east of the footpath act as a source of potential users of the footpath who wish to gain access to Maulden Woods.

54. Mrs. Nadine Dorries M.P. has been supporting Mr. Bowers' case for many years and, in a letter dated 11-1-2012, stated "...the public would not be inconvenienced in any way by the removal of Footpath No. 28 due to the presence nearby of a bridleway. Indeed as the bridleway has been recently upgraded and has a better junction with the road, it is in fact safer for the public to use this than Footpath 28...".
55. In response – the Council's Senior Traffic and Safety Engineer has inspected to the footpath and its junction with Clophill Road and, in an e-mail dated 16-11-2010, stated "... I felt that this footpath does not pose a significant risk to someone exiting straight in to the highway without being aware of the road itself... ..to mitigate the risk of anybody inadvertently running directly on to the highway a hazard warning sign may be installed on the existing post at the entrance to the footway...". This sign has since been erected. The engineer has also evaluated the safety of both routes and the route between the two paths and considers these all to have similar low levels of risk.
56. The Ramblers was consulted and the local Footpaths Officer stated in his detailed response, received 7-2-2012, that "...The path is a pleasant and eminently useable route, giving easy access to the extensive network of paths and tracks within the area of Maulden Wood... ..An examination of the grass surface of the path indicates that the route is well-used and it would appear to be a popular route for local pedestrians and others... ..Extinguishment or deletion will have a negative effect on the local public Right of Way network... ..I have walked the parallel BW24 route and I do not consider this to be an acceptable alternative to FP28. The track along which the BW runs is used by vehicles to gain access to several properties to the rear, and as a result the surface is uneven with water-filled depressions. It presents a much less pleasant route for pedestrians.....A further point to be taken into account regarding the bridleway is that access to it from the southern end is in very close proximity to a road junction. The road at this point carries traffic from Maulden to the A507. This could be potentially hazardous in the case, for example, of families with young children forced to use the bridleway to access the area to the north. There is no footway on the north side of Clophill Road between the FP and the BW... ..there appear to be no material changes since earlier attempts by the applicant to close this path were rejected....".
57. The Open Spaces Society was consulted and responded in a letter, dated 16-2-12, stating: "...We strongly oppose its extinguishment or deletion... ..clearly the path is needed for public use and it would not meet the tests [of the Act]...".
58. The Bedfordshire Rights of Way Association was consulted and in its response, dated 11-2-2012, stated that "...Your Council can only make an Extinguishment Order if it is satisfied that Footpath No. 28 is no longer needed

for public use. This it will find hard to do given that two previous stopping up orders were not confirmed by the Secretary of State... ..even with Footpath No. 28 obstructed by Mr. Bowers' house the respective Inspectors found the nearby Bridleway No. 24 was not a suitable alternative because it carried vehicular traffic and suffered from flash flooding...”.

59. In response – Mr. Bowers and the former County Council jointly contributed to improving the bridleway's surface in 1987. These works appear to have improved the drainage of the lane, though there is still a tendency for temporary floodwater to collect at the bottom of the bridleway and at the road junction. It is not know whether the piping of the ditch visible today formed part of the work carried out in 1987.
60. Bedfordshire Police have not been consulted on the proposed stopping up as there is no requirement or practice to do so. However, Mr. Bowers did submit a letter from PC Knowles which stated “... I have written to you twice previously... ..indicating the support of Bedfordshire Police for [Footpath No. 28's] extinguishment. I would advise that this position remains unchanged, and is consistent with national Secured by Design scheme guidance; 'Footpath design... 4.1 Routes for pedestrians, cyclists and vehicles should not be segregated from one another. Networks of separate footpaths to unsupervised areas facilitate crime and anti-social behaviour and should also be avoided... 4.2 Public footpaths should not run to the rear of, and provide access to gardens, rear yards, or dwellings as these have been proven to generate crime...”
61. In response – the Police's Secured by Design guidelines are a set of national guidelines targeted at crime reduction and do not consider the merits of public rights of way or their benefit to the general public. Sgt. Andy Rivers of Ampthill & Flitwick Area Neighbourhood Policing Team researched the crime figures relating to the area around Footpath No. 28. No reported crimes or incidences of anti-social behaviour have been reported since January 2011 which is as far back as he searched.
62. National Grid (gas), UK Power Networks (electricity), British Telecom, and Anglian Water were consulted on the proposals. At the time of writing (November 2012) only UK Power Networks has responded, stating that it had no objection to the proposals.

## Conclusions

63. Maulden Footpath No. 28 was added to the Definitive Map and Statement in 1997 by a Definitive Map Modification Order based on evidence of long public use. Following the construction of Mr. Bowers' new house and subsequent diversion of the footpath in 2006, the footpath was eventually opened up for public use in 2009. Monitoring equipment has shown that the path was used an average 9.8 times per day between September 2010 and September 2011.
64. Two previous attempts by Mr. Bowers to have the footpath extinguished under the TCP Act and Highways Act have seen extinguishment orders not confirmed by independent Inspectors following two local public inquiries. Reasons for the non-confirmation of the orders included the view that the

The proposed extinguishment of Maulden Footpath No. 28.

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footpath would be used if not obstructed, and that the nearby Bridleway No. 24 was not a suitable alternative to the footpath.

65. Since the last two extinguishment orders were made, several new developments to the east of Footpath No. 28 have occurred (Pennyfathers, Beeches, and Trilley Fields). It is likely that residents from these developments would use Footpath No. 28 to access Maulden Woods as this is their closest right of way.
66. There have been no significant changes in either the condition or utilisation of Mr. Bowers' land or of the bridleway to warrant a third extinguishment order being made. Indeed, the slight realignment of the footpath by the 2010 variation order has resulted in a straight footpath which is adequately surfaced and fenced from the adjoining land. This path is used by members of the public to a significant extent and most probably will continue to be used in the future.

**Appendices:**

Appendix A – Plan of Footpath No. 28

Appendix B – Legal and Policy considerations

Appendix C – Photographs of Footpath No. 28 and Bridleway No. 24

Appendix D – Copy of 26-8-2011 letter to Mr. Bowers regarding installation of a gate