

Meeting: Development Management Committee

Date: 17 July 2013

Subject: The determination of an application to extinguish part of Clophill Footpath No. A4

Report of: Cllr. Ian Dalgarno, Executive Member for Deputy Executive Members for Sustainable Communities – Services

Summary: The report proposes that the application to extinguish the section of Clophill Footpath No. A4 running northwards from Old Kiln Lane across the middle of two paddocks and an arable field should not be approved as the footpath is considered needed for public use.

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Public/Exempt: Public

Wards Affected: Ampthill

Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

It is a statutory duty of Central Bedfordshire Council, as the local Highway Authority, to assert and protect public rights of way. The proposal meets the following Council priorities by asserting the public's right to use a public right of way and by assisting and promoting use of the countryside as a sustainable transport and leisure facility.

- Enhancing Central Bedfordshire – creating jobs, managing growth, protecting our countryside and enabling businesses to grow.
- Promoting health and wellbeing and protecting the vulnerable.
- Better infrastructure – improved roads, broadband reach and transport.
- Great universal services – bins, leisure and libraries.

Financial:

1. If an order is made and subsequently confirmed all Council administration costs, advertising costs and the costs for any works associated with processing this application will be met by the applicants who are also the landowners. If an order is not made, the costs of administration incurred so far will be borne by the Council. If an order is made and opposed, any administration related to forwarding the case to the Secretary of State and any ensuing public hearing or inquiry will also be borne by the Council.

2. Aside from the application, the works needed to open up the footpath would include the installation of two kissing gates, along with vegetation clearance work, waymarking and the construction of a new flight of steps and possibly a short walkway to provide access up the bank from Old Kiln Lane. The total costs of works are estimated at a maximum of £1000 and could be met from the existing Rights of Way budget 452604.

Legal:

3. The Council, as the Highway Authority, can make a public path extinguishment order to stop up a public right of way if it considers it expedient to do so on the grounds that the path is not needed for public use and is unlikely to be used in the future.
4. If a public path extinguishment order is made and opposed, the Council cannot confirm the order but must forward it to the Secretary of State for Environment, Food and Rural Affairs who appoints an independent Inspector to assess the order. The order can be confirmed, modified or not confirmed. Orders can be dealt with by an exchange of correspondence (known as “written representations”) or by a public local hearing or inquiry.

Risk Management:

5. I am satisfied that this report and the recommendation made do not have any risk implications for the Council.

Staffing (including Trades Unions):

6. Not Applicable.

Equalities/Human Rights:

7. Central Bedfordshire Council has a statutory duty to assert and protect the rights of the public to use all highways – including public footpaths and bridleways. Although there is currently no statutory right for members of the public to apply to change the public rights of way network, the Council does offer this service as a discretionary function. How an application is processed is governed by the Council’s Applications Policy on Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders. All applications must meet the legislative tests set down within the relevant section of the Highways Act 1980 (“the 1980 Act”) and comply with Defra guidance and case law. The refusal to approve the application for a public path extinguishment order complies with the tests of Section 118 of the 1980 Act which is the primary legislation in this case.

Public Health

8. Not applicable

Community Safety:

9. Not Applicable.

Sustainability:

10. Public rights of way form important links through and between communities and settlements. Their protection and enhancement is recognised as an important policy for the Council.

Procurement:

11. Not applicable.

RECOMMENDATION:

The Committee is asked to:

- 1. Consider the report and refuse the application to make a public path extinguishment order under Section 118 of the Highways Act 1980 on the grounds that Footpath No. A4 is needed for public use and would be used if it was opened up and made available for public use.**

Introduction

12. Three separate landowners, Messrs. Hemmings, Parrish and Jones applied to Central Bedfordshire Council on 31 March 2012 to extinguish the section of Clophill Footpath No. A4 running northwards from Old Kiln Lane on the grounds that it is not needed for public use.
13. The current route of Clophill Footpath No. A4 crosses through two paddocks, (owned by Mr. Hemmings and Mr. Parrish; section A-B on the plan at appendix A) and runs across an arable field (owned by Mr. Jones; section B-C). The footpath is a dead-end path which terminates at a ditch; it has no connections with any other permanent rights of way. However, it does connect with a permissive footpath created under Natural England's Environmental Stewardship Permissive Access Scheme. This permissive path connects with Clophill Bridleway No. 9 (see Appendix B). The permissive path agreement runs until 31st October 2019 but is unlikely to be renewed after that date.
14. The Council has no record of Clophill Footpath No. A4 ever being open or available for public use. It is currently obstructed by a bank, two fences and three hedge lines before terminating at a further hedge line and drain. However, it has always been shown on the Definitive Map - which is the Council's legal record for public rights of way, since it was first published in 1964.
15. Research into the history of the footpath has shown that it has always been recorded as a dead-end route. The footpath was first recorded as a public footpath on the 1808 Parliamentary Inclosure Award for Clophill. Much later the path was recorded in the 1952 Parish Survey and on the 1953 Draft Map of Public Rights of Way as part of the preparatory work prior to the publication of the 1964 Definitive Map.
16. Aerial photos taken in October 1968 show no visible path. Whilst the path may have been used as a public right of way in the 19th Century, it would appear not to have been used to any great extent in the last 50 or so years. The footpath appears to have only ever led to the ditch at point C which may have been a point of importance 200 years ago but has no relevant function today.

17. On 13 June 2013 the Council was served Notice under Section 130A of the 1980 Act requiring it to remove the several obstructions situated over the line of Clophill Footpath No. A4. The Council has until 13 July 2013 to acknowledge that the footpath is a highway and to state what action it intends to take, if any, to abate the obstructions. If the Council has taken no action by 13 August 2013 to abate the obstructions, the person who has served the Notice on the Council can serve a second Notice on it indicating that they will apply to the Magistrates' Court for an order requiring the Council to remove the obstructions.
18. Based upon the recommendation of this report, the Countryside Access Team intends to confirm to the complainant that enforcement action will be taken to open up the footpath if the Development Management Committee resolves to refuse the application to make an extinguishment order. The Removal of Obstructions from Highways (Notices etc.) (England) Regulations 2004 SI 2004 No. 370 stipulates that the complainant's identity should remain confidential and hence it is not disclosed in this public report.

Description of existing route affected by the application

19. The route of Clophill Footpath No. A4 to be stopped up extends from Old Kiln Lane (point A) up a bank and then in a north easterly direction for approximately 96 metres across a paddock to a fence line and then continues for 41 metres to a sparse hedge line before continuing north easterly for approximately 167 metres across a second paddock to a hedge line at point B. The footpath then continues in a north easterly direction across an arable field for approximately 124 metres until it reaches a hedge and ditch at point C.

Legal and Policy Considerations

20. Central Bedfordshire Council has the power under Section 118 of the Highways Act 1980 to stop up a footpath, bridleway or restricted byway where it appears that it is expedient that the path or way should be stopped up on the grounds that it is not needed for public use. The Council also needs to have regard to whether the path or way would be likely to be used in the future if it were not stopped up. In doing so, the Council has to disregard any temporary circumstances preventing current use of the path.
21. The applicants claim that the section of Clophill Footpath No. A4 between points A-B-C is not needed for public use as the footpath is a dead-end, terminating as it does at a ditch at point C. Furthermore they consider that the nearby Bridleway No. 9 can be used as an alternative route to take walkers from Old Kiln Lane (point A) northwards towards Haynes Church End.
22. The Council has to disregard any temporary circumstances affecting Footpath No. A4 when considering whether it is not needed for public use. Were the footpath open and available to be used by the public, it is likely that it would be used by the public to connect with the permissive footpath which connects Footpath No. A4 to Bridleway No. 9, and provides onwards travel towards Haynes Church End. It is likely that this use would continue, if no order was made, until the permissive path reached the end of its agreement term on 31 October 2019.

23. The Council also has to have regard to the effect that the extinguishment would have on the land over which the footpath passes and the land served by the path. The land over which the footpath passes is part paddock and part arable field. The extinguishment of the footpath would help with the management of the land whereas retaining the path and opening up the route would require no more than the owners are currently obliged to do. The extinguishment of the footpath would, however, sever a desired link between Clophill and Haynes Church End.
24. In considering whether to make orders under the 1980 Act the Council has a duty to consider any material provisions contained within its Rights of Way Improvement Plan. The proposal does not conflict with the aims of the plan. The 1980 Act also imposes a duty on the Council to have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features when determining whether to make and confirm creation, extinguishment and diversion orders. The extinguishment of the section of Footpath No. A4 between points A-B-C would improve the husbandry of the land which is currently set either to paddock or arable. The retention of the footpath would require two or three hedges to have gaps made in them which would have a minor detrimental effect on the flora in the immediate area.
25. The Council's Applications Policy was approved in July 2012 and requires footpaths to be open until extinguished by order. However, as this policy post-dates the current application this requirement has not been enforced.

Consultations

26. Consultations were carried out with the Parish Council, the local Councillors, local residents, the local Ramblers representative and the statutory undertakers (utilities).
27. Clophill Parish Council objected to the proposed extinguishment in a letter, dated 20 June 2012. It stated that "...Footpath No. A4 as shown is not a dead end. Since Nov 2009 there has been a permissive path linking the northern end of Path A4 with Bridleway BW9 as part of the landowners Stewardship Agreement lasting 10 years... ..The problem with the suggested alternative, Bridleway BW9, is that it is heavily used by horse riders so the surface is churned up and often not suitable for pedestrians... ..We also support the aspirations of the Green Infrastructure Plan that the gap between the northern end of Footpath A4 should be formally joined to Bridleway BW9..."
28. The Greensand Trust was not consulted but had heard about the proposal. It stated in an unsolicited e-mail, received 30 May 2012, that it objected to the application on the grounds that the path is not a dead end route. This is because it connects with the permissive footpath created as part of the DEFRA [Natural England] Stewardship Scheme. The Trust stated that the footpath is only unused because of the three obstructions (hedges and fences) along its length. If made available, the Trust believes the route would be used as part of a circular walk using Bridleway No. 9.

29. Mr. Michael Brooks, a local Clophill resident, objected to the proposal in an unsolicited e-mail, received on 4 June 2012. He objects on the grounds that the current permissive path would enable users, if given the opportunity, to walk along Footpath No. A4 and onto bridleway No.9. Mr. Brooks states that this route would be a circular walk, something Clophill is short of and would also provide walkers with a useful link to the Council's promoted Greensand Ridge Walk. Mr. Brooks also stated that the footpath has been obstructed for 25 years and this is why the footpath has not been used, although he has attempted to walk the obstructed route at least once during this time. Mr. Brooks refers to the Clophill Green Infrastructure plan where the permissive path at point C is identified as a project to create a permanent footpath link between Footpath No. A4 and Bridleway No. 9.
30. Mr. David Myers is a local footpaths volunteer and is a member of the People Places and Partnerships ("P3") group in Clophill. He responded on 8 June 2012 to state that he strongly objects to the proposal and that the footpath has been obstructed for many years; something he has mentioned to the former Bedfordshire County Council and more recently Central Bedfordshire Council. Mr. Myers considers that Bridleway No. 9 is not an adequate alternative for the existing Footpath No. A4 due to the bridleway regularly getting churned up by horses. Mr. Myers is keen to extend the range of circular walks in the village and considers that this footpath would make a good circular walk. He has also suggested that the footpath could be diverted by taking the footpath to the eastern edge of the grass meadows instead of being extinguished.
31. Mr. Bob Tarron, Chairman of the Ramblers' Bedfordshire Footpaths Committee, responded on 8 June 2012. He stated that the Ramblers object to the proposal. He asks that the obstructions along the footpath are removed to allow it to be walked by the public. Mr. Tarron states that "...Clophill Footpath No. A4 is the obvious route for walkers leaving the village on their way to Haynes and should be kept open and in good condition, the detour along [Old] Kiln Lane and Bridleway No. 9 is a less pleasant and unsatisfactory alternative which should be avoided...".
32. Mr. Peter Patmore, the Ramblers Secretary for Clophill, responded on 10 July 2012. He stated that the Ramblers object to the proposal to extinguish Clophill Footpath No. A4 and reiterated Mr. Tarron's comments above.

Comments on objections

33. It is very clear from the consultations held that the Ramblers, Parish Council and Clophill residents feel very strongly about keeping this footpath on the Definitive Map and would like it opened up and made available for public use.
34. If the footpath was opened up walkers using Footpath No. A4 would have until 31 October 2019 to access Bridleway No. 9 via the permissive footpath. This route can be used as part of a circular route or as onwards travel to Haynes (see Appendix C). However it must be remembered after October 2019 no through route will exist. Mr. Jones has stated that he has no intention to create a permanent footpath along the missing link and the permissive path agreement is unlikely to be renewed after 2019.

Landowner consent

35. The three affected landowners (Messrs. Parrish, Hemmings and Jones) are fully supportive of the proposal and have agreed to defray any compensation costs. If an order is made the landowners will be responsible for covering all costs involved, including officer time and advertising costs. If an order is not made the full costs of the Council's administration to date will be borne by itself.

Conclusions

36. The tests of the Highways Act 1980 which need to be considered are whether the footpath is needed for public use and whether it would be used if it were not stopped up. The clear response from the consultees is that this footpath is needed for public use and furthermore it should be opened up as soon as possible so users can take advantage of the current permissive path over Mr. Jones' land which links into Bridleway No. 9.
37. It is very difficult to determine whether a path is needed for public use when it is closed to the public. Once the obstructions have been removed, and users are able to safely walk the footpath, use can be electronically monitored to determine if it is in fact needed for public use.
38. The landowners may wish to resubmit their application in the future if the permissive footpath agreement is withdrawn or reaches the end of its term, and the Footpath No. A4 becomes a dead-end route. However, until that time members of the public have the expectation that the public footpath should be open and available for their use and should connect to the adjoining permissive path and nearby bridleway.

Appendices:

Appendix A – Plan showing proposed extinction

Appendix B – Plan showing permissive access under Natural England's Stewardship Scheme

Appendix C – Plan showing wider public access network