
Meeting: Development Management Committee
Date: 14 October 2015
Subject: The proposed diversion of parts of Eversholt Footpaths Nos. 10, 11 and 31.
Report of: Paul Mason – Head of Highways

Summary: The report proposes that parts of Eversholt Footpaths Nos. 10, 11 and 31 be diverted to more direct or unobstructed routes that are already set out or used by the public.

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Public/Exempt: Public
Wards Affected: Aspley & Woburn – Cllr. Budge Wells
Function of: Council

CORPORATE IMPLICATIONS

Council Priorities:

1. The proposal reflects the following Council priorities:
 - Promote health and wellbeing and protecting the vulnerable.
 - Better infrastructure – improved roads, broadband reach and transport.
 - Great universal services – bins, leisure and libraries.

The proposal will facilitate increased pedestrian and sustainable transport access through the Tyrell's End area of Eversholt by providing more direct and user-friendly routes. Walking for local trips and for leisure reduces pollution and increases general health and wellbeing.

Financial:

2. The proposal, although initially received as an application, has been processed as a Council-generated scheme. This is because it provides enhancement to the local public rights of way network and resolves several used-route anomalies. Moreover it would be unreasonable to enforce the legal line of the footpath through the private gardens when there is a suitable and currently used alternative route close by. Under the Council's Anomalies Resolution Programme, all the costs relating to this and identified in paragraphs 3, 4, and 5 below will be met out of existing Rights of Way Team revenue budgets.

3. The costs of Council administration and advertising the making and confirmation of the order are estimated at £700 and £500 respectively. However, the order is likely to be opposed by the Eversholt Estate which means that the order would need to be forwarded to the Secretary of State for Environment, Food and Rural Affairs for confirmation which would cost the Council approximately £1000 in additional administration and possible venue hire. Should external legal advice or advocacy be required, this could cost potentially £1000.
4. Minor works will be required once the diversion order is confirmed. These relate primarily to: relocation of waymark posts, removal of a small gate and the alteration of two short sections of post-and-rail fencing, and the cutting back of possibly three elderly fruit trees. The costs of works is envisaged to be approximately £350.
5. The majority land owner, the Eversholt Estate, has objected to the proposed diversion of part of Footpath No. 31 on to its land and would have a right to claim compensation for any loss of value in the land caused by the coming into operation of the proposed diversion order. The anticipated value for compensation is £170 based on a 26 metre long section of 2 metre wide field-edge footpath. The Council may also need to provide a supportive independent valuation of this level of compensation which could cost about £500. The Council may also be liable to pay a similar amount for any valuation obtained by the Eversholt Estate plus associated reasonable legal expenses – possibly up to £1000. Conversely, should the Eversholt Estate be successful in objecting to the proposed diversion order at either a public hearing or public inquiry any reasonable legal costs incurred by the Estate could be claimed back from the Council. These could be over £1000.

Legal:

6. Section 119 of the Highways Act 1980 (*“the 1980 Act”*) empowers Central Bedfordshire Council, as the local Highway Authority, to make and subsequently confirm a public path order to compulsorily divert a public footpath if it is satisfied that it is expedient to do so having regard for the relevant tests of the Act.
7. The majority land owner, the Eversholt Estate, has objected to the proposed diversion of part of Footpath No. 31 on to its land. Consequently it is likely to object to any diversion order made in which case the Council would not be able to confirm the order itself but would have to forward it to the Planning Inspectorate. An independent Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs would determine whether the opposed order was confirmed, modified or not confirmed.
8. The Council’s Applications Policy for Public Path Orders, Definitive Map Modification Orders, and Town & Country Planning Act 1990 Orders provides guidelines for imposing paths on landowners without their consent. In this case the proposed diversion of Footpath No. 31 would significantly enhance the local public rights of way network and thus is permitted by the policy.
9. Sections 28 and 121 of the 1980 Act relate to the right to compensation for anybody with a legal interest in land affected by a public path order. The Eversholt Estate could claim compensation for their depreciation or loss in the value of their interest in the land caused by the coming into operation of the proposed diversion order.

Risk Management:

10. The proposed diversion of part of Footpath No. 31 would improve the local public rights of way network and is supported by all parties except the affected landowner, the Eversholt Estate. The proposal is considered to meet the required tests of the 1980 Act. However, a successful objection – if heard at a public hearing or inquiry could lead to automatic awards of costs of over £1000. Even if an objection was unsuccessful the coming into operation of the resulting order could cost the Council over £1000 in compensation and valuers' and solicitors' fees.

Staffing (including Trades Unions):

11. Not Applicable.

Equalities/Human Rights:

12. The proposed diversions would provide more easily accessible routes for the public to use whilst accessing the public rights of way network. The proposal would not discriminate against any particular group. If the proposal succeeds the Council does have a duty under the Equalities Act 2010 to ensure that it is usable as far as reasonably practicable by all members of the public. The routes as reinstated by the landowners, the Eversholt Estate, tend to be fairly level and free from crop. Additionally, the removal of parts of Footpaths Nos. 10 and 31 from the front gardens of the two properties would provide a significant increase to the owners' privacy and security. Conversely the diversion of this footpath would impose an additional section of right of way on the Estate thus devaluing the land and having a detrimental effect on the land's productivity. However the Estate does have a right to object and be heard by an independent Inspector. It also has the right to claim compensation caused by depreciation or loss in the value of their interest in the land caused by the coming into operation of the proposed diversion order.

Public Health

13. Not applicable

Community Safety:

14. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report. The proposal would not have any detrimental effect on public safety.

Sustainability:

15. Not applicable

Procurement:

16. Not applicable.

RECOMMENDATION:

The Committee is asked to approve:-

1. The making of a public path diversion order under Section 119 of the Highways Act 1980 to divert parts of Eversholt Footpaths Nos. 10, 11 and 31 from points A-B-C-D, B-E and C-F respectively on the plan at Appendix A to points A-X-Y-D, X-E and Y-Z-F respectively.

Introduction

17. Dr. and Mrs. Knott of “Rush Hill”, Tyrell’s End, Eversholt applied in July 2009 to divert part of Footpath No. 31 out of their and their neighbour’s (Mr. and Mrs. Williams of “Helford House”) gardens and onto the adjoining private driveway and path that have historically been used by the public to access the remainder of the footpath.
18. Parts of Footpaths Nos. 10 and 31 have been obstructed by the gardens of “Rush Hill” and “Helford House” probably since the properties were built in 1913. The houses were re-mapped by the Ordnance Survey in the mid-1970s and re-plotted in a different orientation on the 1978 4th edition of the 1:2,500 map. This revised orientation was subsequently incorporated into the post-1996 digitised version of the Definitive Map which is when the former County Council became aware of the issue.
19. Footpaths Nos. 10 and 11 follow the erratic historic lines of the old field boundaries which were grubbed out in the early/middle part of the 20th Century. However, the Eversholt Estate currently reinstates these footpaths as straight lines using Rush Hill and a telegraph pole as arbitrary markers with which to align their reinstatement activities. Consequently walkers do not currently use the legal lines of these two footpaths for the majority of their lengths.
20. The proposed diversions seek to realign the legal lines of the three footpaths onto the routes currently used by the public and, for Footpaths Nos. 10 and 11, laid out by the farmer through the crops.

Legal and Policy Considerations

21. Section 119 of the Highways Act 1980 (“the 1980 Act”) empowers the Council, as Highway Authority, to make and confirm an order to divert a public footpath subject to a number of legislative tests being met as below.
22. The Council can **make** a public path diversion order if it is expedient to do so in the interests of the owner or occupier of the land or the public. The Council also has to be satisfied that the termination points are substantially as convenient and connected to the same or a connected highway.
23. Footpath No. 10 currently runs from Hills End road (point A on the plan at Appendix A) in a generally north-eastwards direction along a meandering course through a large undulating arable field. It then crosses the private driveway to “Rush Hill” and passes through that property’s garden and into the neighbouring garden of “Helford House” where it has a junction with Footpath No. 31 (point C). The footpath then continues south-eastwards to terminate at its junction with Tyrell’s Road at point D. The proposed diversion of Footpath No. 10 would follow a direct route along the private driveway to Rush Hill between Hills End road

(point A) and Footpath No. 31 at point Y before passing through a small area of fruit trees and then along the gravelled track to terminate at Tyrell's Road (point D). The farmer would be able to reinstate a straight route rather than having to try to follow the erratic legal line of the footpath and the owners of "Rush Hill" and "Helford House" would not be obliged to open up routes for the path through their gardens. The diverted route would provide a simpler more direct route for members of the public to follow. The termination points of the footpath would remain unaffected (points A and D). The proposed diversion would be in the interest of the farmer from a land management perspective, the owners of "Rush Hill" and "Helford House" from a privacy and security perspective and in the interest of the public as it would provide a more direct route.

24. The proposed diversion of Footpath No. 11 would follow a direct route between Footpath No. 11 (point X) and the unaffected part of this footpath at point E. This alignment is currently reinstated by the farmer using the telegraph pole south-south-east of point X. The termination points of the footpath would either remain unaffected (point E) or would move a comparatively short distance (28 metres) east-south-eastwards from point B to point X. The proposed diversion would be in the interest of the farmer from a land management perspective.
25. Footpath No. 31 currently starts in the garden of "Helford House" at its junction with Footpath No. 10 at point C) and proceeds north-westwards through a hedge into and across the garden of "Rush Hill" before passing through another hedge into the corner of an arable field. The footpath then skirts the edge of a plantation before re-entering the arable field to run through the crop at a distance of approximately 8 metres from the field's edge. The proposed diversion of Footpath No. 31 would follow a route from its junction with Footpath No. 10 at point Y around the edge of the arable field to its junction with Footpaths Nos. 11 and 12 at point F. The termination points of the footpath would either remain unaffected (point F) or would move a comparatively short distance (42 metres) west-south-westwards from point C to point Y). The proposed diversion would be in the interest of the owners of "Rush Hill" and "Helford House" as it improves the privacy and security of these properties. The proposal would also be in the public interest as it would provide a more user-friendly route.
26. The proposed diversion of the three sections of footpaths between points A-B-C-D, B-E and C-F as set out above meet the required tests for making a public path diversion order and it is expedient to make an order.
27. Before **confirming** a public path diversion order the Council must be satisfied that the diversion route will not be substantially less convenient to the public and it is expedient to do so having regard to the effect on the public's enjoyment of the route as a whole and the effect of the order on the lands served by the path and the diversion.
28. Footpath No. 10 extends from point A on Hills End road in a meandering but generally north-eastern direction for approximately 412 metres to the garden of Helford House (point C) and then continues for another 32 metres to Tyrell's Road (point D). The proposed diversion would be approximately 367 metres in a straight line between points A and Y and consequently would be more convenient to the public. The route crosses the same arable field and so would be give the public a similar level of enjoyment as the current legal line. The effect of the diversion on the land served by the footpath would be to remove public access from the private gardens of "Rush Hill" and "Helford House". The effect on the arable field would be negligible beyond making reinstatement more convenient for the farmer.

29. Footpath No. 11 extends from its junction with Footpath No. 10 at point B in a northerly direction for approximately 152 metres to its junction with an unaffected part of the footpath at point E. The length walkers would have to travel between points A-B-E would increase from 280 metres to approximately 300 metres for the proposed diversion A-X-E and would utilise the route usually reinstated by the farmer. The effect on the arable field would be negligible beyond making reinstatement more convenient for the farmer.
30. Footpath No. 31 extends from the garden of "Helford House" (point C) through the garden of "Rush Hill" and then variously through the edge of a plantation and across an arable field. The current route between points C-F is approximately 234 metres. The proposed diversion route between points Y-Z-F is approximately 220 metres and is substantially as convenient for the public. The effect of the diversion on the land served by the footpath would be to remove public access from the private gardens of "Rush Hill" and "Helford House" thus increasing the properties' privacy and security. The proposed diversion would significantly enhance the public's enjoyment of Footpath No. 31. The effect on the arable field would be generally to remove the footpath from the crop and to place it around the field's edge. An additional approximately 26 metres of footpath would be created around the edge of the field between points Y-Z. This would remove approximately 52 square metres of field from agricultural production - which is about 0.04% of the area of the field and consequently is likely to have only a negligible effect on agricultural productivity.
31. The Council has a duty under Section 119(6A) of the 1980 Act to consider any material provisions contained within a Rights of Way Improvement Plan ("RoWIP") when determining whether or not to confirm a public path order. The Council's Outdoor Access Improvement Plan acts as its RoWIP. The proposal does not conflict with any of its aims. Section 29 of the 1980 Act 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 a public path order. The effect of the order would be to improve the ease with which the farmer can carry out their legal duty to reinstate the footpaths after any agricultural activities. The addition of a short additional section of field-edge footpath between points Y-Z would not significantly impact on the Eversholt Estate's farming activities. The effect on flora, fauna and agriculture would be negligible.
32. The proposed diversion of the three sections of footpaths between points A-B-C-D, B-E and C-F as set out above meet the required tests for confirming a diversion order.

Consultation

33. Dr. and Mrs. Knott were consulted on the proposal and have stated "...*We are still very interested in the proposed diversion...*"
34. Mr. and Mrs Williams were consulted on the proposal and responded by e-mail stating "...*We here at Helford House are very much in favour of this change, putting on the record traditional practice that has applied for the last century! ..*"
35. The Eversholt Estate was originally consulted on a slightly different version of the proposal which would have utilised slightly more field edge than the current route. The Estate responded in an e-mail, dated 14th April 2015, stating "...*In respect of the application being considered to stop up part of Footpath 31 and to create a new Footpath 31: OBJECTION. It is felt that the route could follow a line along the fence*

on the same side of the existing footpath. In respect of the application to stop up Footpath 10 between [point C and the edge of the field]: OBJECTION. (See above) In respect of the application to stop up Footpath 10 between [edge of field and point A]: NO OBJECTION as long as the existing path is stopped up. In respect of the application to stop up Footpath 11 and to create a new Footpath 11: NO OBJECTION as long as the existing path is stopped up. The proposed diversion of Footpath 31 between [Y-Z-F] and of Footpath 10 between [D-Y] will place pressure on the Estate by removing land out of agricultural production and for this reason we object to this application. There are a number of footpaths on this farm the responsibilities for which the Estate takes very seriously and in this regard ensures good access for the public at all times...” In a follow up e-mail, dated 1st May 2015, the Estate stated “...I have had a look at the location of the revised route [as per the current proposal]. As you know the path deviates from the public footpath. Whilst understanding the wish for the path to be moved from its proximity to a house, the route follows over Estate land; consent for this has not been granted or sought. We would seek for the route used to be realigned with / reinstated to the definitive footpath...”

36. In response – the diversion of Footpaths Nos. 10 and 31 from points D-C-F to D-Y-Z-F would provide a route that is more open and accessible to the public and less likely to discourage users when compared to a route running through the front gardens of “Rush Hill” and “Helford House”. The removal of approximately 52 square metres of land from agricultural production – equivalent to approximately 0.04% of the area of the field – by the proposed diversion Y-Z is unlikely to significantly detract from the overall agricultural productivity of the field.
37. The Ramblers were consulted and responded to support the proposal as being “very sensible”.
38. Eversholt Parish Council was consulted on the proposal and responded stating “...the Parish Council agree to the diversion but would like it noted that other paths may need to be considered for diversion in the future...”
39. Mr. Pat Richardson, although not consulted directly wrote to the Council in a private capacity - he is also vice-chair of the Eversholt Parish Council. In an e-mail, dated 23rd March 2015, he stated “...I wish to advise that I am strongly opposed to the re-siting of these footpaths... ...In the late eighties the then chairman of the parish council... lived in one of the properties at Rush Hill (this is the local name for the two properties involved in the footpath requirement). In those days the chairman of the PC was an esteemed position. [He] chose to close the footpaths FP31 and FP10 illegally as they crossed his and his neighbour’s property. Because of his position it was not opposed, locals did not want to cause ill feeling. The situation was exacerbated by Mid Beds Council, which put way markers incorrectly along the track which is now the proposed route. Whether this was at the behest of [the chairman] is not known or if he moved the direction shown. Mid Beds and Central Beds have continued to support this anomaly... ...To accept the current proposal and rationalise the footpaths that run across private domestic land is not acceptable unless the same applies to private farm land. I suggest the footpaths 31 and 10 should be put back in their legal position while the whole subject is readdressed...”
40. In response – irrespective of what actually happened with the footpaths in the 1980s, the proposed diversion routes have probably been used by the public for some 30-35 years and represent an improvement in the public rights of way network compared to the current legal lines of the paths due to the landscaping of the gardens and to them following the old lines of long-grubbed-up hedgerows.

Additionally, walkers can feel awkward about walking through private gardens and may instead prefer to use a clearly delineated route along the access track.

41. The statutory undertakers were consulted. Anglian Water responded to state that it “...has no record of any easements which will be affected by your proposals...” National Grid (gas) responded to state that it “...has identified that it has no record of apparatus in the immediate vicinity of your enquiry. National Grid therefore has no objection to these proposed activities...” Whilst British Telecom has not responded there is a telegraph pole on the proposed diversion route close to point D. UK Power Networks (electricity) were also consulted but did not respond.

Conclusions

42. Eversholt Footpaths Nos. 10 and 31 have been obstructed for many years by the hedges and fences surrounding “Rush Hill” and “Helford House” at Tyrell’s End, Eversholt. The proposal seeks to divert the obstructed sections of footpath onto the nearby private driveway and around the nearby field-edge.
43. Footpaths Nos. 10 and 11 indirectly cross a large arable field. However, the farmer reinstates more direct and convenient routes. The proposal seeks to divert the legal lines of these footpaths onto these alternative routes.
44. Whilst the proposals are well supported the owners of the two houses, “Rush Hill” and “Helford House”, the Eversholt Estate objects to the diversion of an additional short section of Footpath No. 31 onto its land. However, the proposal is in the public interest and in the interests of the owners of the two houses.

Appendices:

Appendix A – Plan showing the proposed diversions.