

Central Bedfordshire Council

Development Control Committee

12/10/2016

Update on Maulden Footpath No. 28

Report of Paul Mason - Assistant Director - Highways

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Purpose of this report

1. This report informs Committee members of the legal and administrative history of Maulden Footpath No. 28. It also provides Members with an update on the most recent involvement of the Secretary of State for Environment, Food and Rural Affairs and the courts in the attempts to extinguish and delete the footpath.
2. The report also provides legal comment and advice on the most recent Secretary of State's decisions and summarises the Opinion sought on the merits of applying to the Magistrates' Court for a stopping up order.

RECOMMENDATIONS

The Committee is asked to:

1. **Consider the legal advice given in the report.**
2. **Determine whether, in light of this advice, the Committee should rescind its 13 February 2013 resolution to apply to the Magistrates' Court under S.116 of the Highways Act 1980 for a court order stopping up Maulden Footpath No. 28.**
3. **Determine whether no further action should be taken to remove Maulden Footpath No. 28 unless one of the following specific criteria is met:**
 - a. **That there is a very significant change in the layout out of Maulden Bridleway No. 24 that permits the separation of vehicular and non-vehicular traffic and consequently could allow the consideration of a new application under S.118 of the Highways Act 1980 to extinguish the footpath.**
 - b. **That there is an application for substantial development that necessitates the extinguishment of Maulden Footpath No. 28 to enable that development to take place. An application to extinguish the footpath under S.257 of the Town and Country Planning Act 1990 could then be considered with the condition**

that any extinguishment order be revoked if no development takes place before the consent expires.

- c. That new cogent evidence that is significantly different to that already considered is received by the Council as part of a new definitive map modification order application to delete Maulden Footpath No. 28.**

Introduction

3. Maulden Footpath No. 28 generally lies along the line of a path maintained by a number of the previous owners between c.1883 and the 1980s. This path was used by many local inhabitants as a cut-through from Clophill Road to Maulden Woods. Public use of the footpath was apparently without challenge apart from when the route was obstructed for a fortnight in c.1956/7 by the then owner, Mr. Cecil Sharp. Despite its popular status, the route was not recognised by the former Bedfordshire County Council as being a public right of way and so was not included in the Definitive Map and Statement when this was originally drafted during the 1950s and 1960s.

The involvement of Mr. Alan Bowers

4. Footpath No. 28 lies almost entirely within the curtilage of No. 123b Clophill Road; which comprises: a house, garden and adjoining donkey paddock (see Appendix 1). The current owner of the land, Mr. Alan Bowers, obstructed the route of the footpath in 1992. This precipitated a claim for the footpath to be formally recorded on the Definitive Map and Statement; which is the Council's legal record of public rights of way. A definitive map modification order adding the footpath was confirmed in 1997. Mr. Bowers has fought ever since to have the footpath removed from his property. This has resulted in Footpath No. 28 having a long and complicated administrative history. This is outlined in the table below and described in more detail at Appendix 2.

Year	Important event
1992	Mr. Bowers blocked the route of Footpath No. 28. A local resident applies to add Footpath No.28 to the Definitive Map and Statement.
1995-97	Bedfordshire County Council makes a modification order to add Footpath No. 28 to the Definitive Map which was subsequently confirmed following objections by Mr. Bowers in 1997.
1998-99	Mid-Beds District Council makes an extinguishment order

	on behalf of the land owner which was subsequently not confirmed following a public inquiry in 1999.
2000-01	Mid-Beds District Council makes a second extinguishment order on behalf of the land owner which was subsequently not confirmed following a public inquiry in 2001.
2004-06	Bedfordshire County Council makes a diversion order which was subsequently confirmed in 2006 following a public inquiry. Central Bedfordshire Council later makes and confirms an order to vary the diverted route in 2010.
2013	Mr. Bowers' three applications: extinguishment, deletion and Magistrates' Court, are determined by the Development Management Committee.
2013-14	Central Bedfordshire Council makes an extinguishment order on behalf of Mr. Bowers which is subsequently not confirmed following a public inquiry in 2014.
2013-14	Central Bedfordshire Council applies to the Magistrates' Court for a stopping up order on behalf of Mr. Bowers. Following two adjournments the Council withdraws its application.
2013-15	Mr. Bowers appeals unsuccessfully against the Council's refusal to make a modification order to delete the footpath. Following a successful Judicial Review in 2014, his appeal was refused by the Secretary of State for a second time following a public inquiry in 2015.
2015-2016	Mr. Bowers applies to the High Court of Justice for Judicial Review of the Secretary of State's second refusal of his Sch. 14 appeal. His application is refused.

Criminal proceedings

5. In addition to the above administrative events, Mr. Bowers has attended court three times (2000, 2007, 2009) in relation to unlawfully obstructing Footpath No. 28. This has led to two convictions with fines and costs being imposed against him.

Significant events since the February 2013 Committee resolution

6. In June 2014, the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs to hear the Central Bedfordshire Council (Maulden: Footpath No 28) Public Path Extinguishment Order 2013 determined not to confirm the order following a local public inquiry. This is a material consideration as the Justices hearing an application at the Magistrates' Court for stopping order would give this

significant weight, although they are not necessarily bound by the Inspector's decision.

7. In October 2015, an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs heard the Schedule 14 Appeal against the Council's decision not to make a definitive map modification order to delete Footpath No. 28. The Inspector determined that the appeal should be refused following a non-statutory local public inquiry. Mr Bowers applied in late December 2015 for Judicial Review of the Secretary of State's refusal. His application was refused and he has no further legal avenues of appeal open to him in this matter. Whilst not a material consideration for the Magistrates' Court, the refusal does mean that the Definitive Map and Statement remains conclusive proof at law as to the existence of Maulden Footpath No. 28.

Legal and Policy Considerations

8. Section 56 of the Wildlife and Countryside Act 1981 (*"the 1981 Act"*) explicitly states that the Definitive Map is conclusive evidence as to the public rights shown upon it, though this is without prejudice to the subsistence of any higher public right. The accompanying Definitive Statement is conclusive evidence as to the described position and width of the public right and to any limitation or condition recorded therein.
9. The former County Council, as the Surveying Authority for the Definitive Map, had a statutory duty under Section 53(2) of the 1981 Act to modify the Definitive Map and Statement to record Footpath No. 28 as evidence was discovered (through the original claim for a public footpath) which showed that a public right of way subsisted.
10. Upon confirmation of the County Council for Bedfordshire (Definitive Map and Statement for Bedfordshire)(Maulden: Footpath No. 28) Modification Order 1995 in 1997, the Definitive Map and Statement became conclusive proof at law that a public right of way on foot exists through the curtilage of No. 123b Clophill Road.
11. The former County Council, and now Central Bedfordshire Council, as the Highway Authority, has a duty under Section 130 of the Highways Act 1980 (*"the 1980 Act"*) to assert and protect the rights of the public to use and enjoy any highway within their area. This has resulted in the land owner being prosecuted three times for obstruction of the public right of way (see Appendix 2).
12. Since Footpath No. 28 was added to the Definitive Map and Statement in 1997, the land owner has applied on several occasions (1997, 2000, 2004, 2008) to have the footpath either extinguished or deleted. The decisions of the various Inspectors appointed by various Secretaries of State in 1999, 2001, 2014 and 2015 (see Appendix 3A-H) have confirmed that:
 - There is no evidence to show that Footpath No. 28 is incorrectly recorded on the Definitive Map and Statement

- The footpath is needed for public use
 - The nearby bridleway does not provide a suitable alternative to the footpath.
13. The Council failed in its most recent attempt to extinguish Footpath No. 28. The Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs did not confirm the 2013 public path extinguishment order following a public inquiry in June 2014.
 14. The legislative tests for an extinguishment under Section 118 of the 1980 Act is “*not needed for public use*”. This is a more lenient test than that required to be met for a successful application to the Magistrates’ Court under Section 116 of the 1980 Act. An applicant would have to satisfy the Justices that the highway is “*unnecessary*”. In both types of application (Section 118 and 116) there is also an expediency test as to whether the highway should be extinguished.
 15. Once the Inspector’s decision on the 2013 public path extinguishment order became known in July 2014, the Council sought Counsel’s legal Opinion on the prospects of success of the (then) adjourned application to the Magistrates’ Court; which was due to be heard at a three-day hearing in September 2014.
 16. Counsel’s detailed Opinion was received in mid-August and can be summarised as follows:
 - A. The Justices have to consider what highway function is performed by Footpath No. 28 and then to consider whether that highway function is unnecessary. Even if the Justices decide that Footpath No. 28 is unnecessary, they could nevertheless consider that it was not expedient to stop up the footpath.
 - B. The Justices can only consider factors affecting the public use of the route. Any benefit or disbenefit of the path to the landowner, Mr. Bowers, are not a consideration with regard to whether the footpath is unnecessary for public use.
 - C. Unless the evidential position changed significantly since the unconfirmed public path extinguishment order, the stopping up application under Section 116 is unlikely to be successful. There is clear evidence (from an electronic counter) that the footpath has been used and the refusal of the 2013 public path extinguishment order took into consideration the likely ameliorating effects of the pedestrian refuges now constructed on the nearby Bridleway No. 24.

Indeed, following the most recent (October 2015) decision of the Inspector appointed to hear the recent Schedule 14 Appeal, it can only be surmised that the evidential position has hardened as there is now no doubt about the legal existence of the footpath.
 - D. Accordingly, the only prospect of success of such an application would rest in persuading the Justices to depart from the findings of the three Inspectors who found that that the footpath was needed

for public use and that it was not expedient to extinguish the footpath. Counsel estimated the likelihood of success on this basis to be around 20%. However, such a favourable decision risks being legally flawed and thus itself subject to Judicial Review. Consequently the overall prospects of success maybe lower than 20%.

- E. The Council would have difficulty arguing that, in pursuit of the application, it had acted reasonably and on grounds that were reasonably sound given the three Inspector's decisions. Consequently, the Council would be open to an award of costs against it if it was unsuccessful in its application. Contributory risk factors to an award of costs against it include:
- i. The making of an application against the recommendations of its Officers
 - ii. The existence of a very recent Inspector's decision not to confirm a public path extinguishment order for the footpath
 - iii. The fact the application does not meet any of the Council's own applications Policy criteria for making an application to the Magistrates' Court (see Appendix 4).

17. There is guidance in case law to support points (A) and (B) above; specifically *Ramblers Association v Kent (1990) 60 P&CR 464*, in which Woolf LJ. stated:

*First of all I consider that magistrates, in deciding whether or not a highway is unnecessary, should bear in mind **the question for whom the highway is unnecessary. It is to be unnecessary for the public.** It is the public who have the right to travel up and down the way in question, and it is the public with whom the justices should be concerned because the right is vested in them. It is for this reason that I drew attention to the somewhat different language in section 118.*

*Then the justices might ask themselves, in considering an application under section 116, the question for what purpose should the way be unnecessary before they exercise their jurisdiction. So far as that is concerned, **it should be unnecessary for the sort of purposes which the justices would reasonably expect the public to use that particular way.** Sometimes they will be using it to get primarily to a specific destination—possibly here the shore. Another reason for using a way of this sort can be for recreational purposes.*

*In my view, where there is evidence of use of a way, **prima facie, at any rate, it will be difficult for justices properly to come to the conclusion that a way is unnecessary unless the public are or are going to be provided with a reasonably suitable alternative way.** In deciding whether an alternative way is reasonable, it must be a way which is protected, so far as duration is concerned, in the same way as the existing way is protected. It*

must also be suitable, or reasonably suitable, for the purpose for which the public were using the existing way. (emphasis added)

18. The previous Chief Legal & Democratic Services Officer and Monitoring Officer for the Council (Melanie Clay) incorporated Counsel's Opinion into the legal advice she gave to the Chairman of the Development Management Committee on 13 August 2014. The advice indicated that there had been a significant change in circumstances since the February 2013 Committee resolution to make an application to the Magistrates' Court; specifically the Inspector's decision not to confirm the 2013 public path extinguishment order. In order to allow the Committee to properly consider the issues, the Chief Legal & Democratic Services Officer and Monitoring Officer exercised the constitutional power to adjourn the imminent Magistrates' Court hearing. Following the refusal of the Magistrates' Court to adjourn the hearing for the period requested, the Council had no choice other than to withdraw the application with leave to re-apply to the court at a later date.
19. Counsel's Opinion on the issue is unequivocal in that the Council is unlikely to be successful should the Committee resolve to make a re-application to the Magistrates' Court to stop up Footpath No. 28. The decisions of three Inspectors and comments of a District Judge have shown that there is no legislative leeway which would permit the Council to act reasonably in making a fourth public path extinguishment order. To do so would place the Council at risk of both Judicial Review and a Local Government Ombudsman ("LGO") ruling against its decision to do so. Furthermore, any re-application would place the Council at serious risk of a substantial award of costs against it and would also damage its reputation as a local authority.
20. The recent decision of the Inspector hearing the Schedule 14 Appeal made it clear that the evidence supplied was neither new nor cogent and fell far short of displacing the presumption that the Definitive Map is correct (see Appendix 3G). Consequently, whilst anybody could re-apply to delete Footpath No. 28, they would have to supply new and cogent evidence that is relevant to the relevant period of public use of 1936-56. Any application which did not supply such evidence could not reasonably be considered by the Council, as the Surveying Authority for the Definitive Map and Statement.

The administrative burden of Footpath No. 28 on the Council

21. Council Officers have spent many hours corresponding with Mr. Bowers' on his various applications and also dealing with the various aspects of the numerous orders, including preparation of cases for the Secretary of State and attending the several public inquiries.
22. Mr. Bowers has also submitted a significant number of complaints, both to the Chief Executives of the former County Council and to the successor Central Bedfordshire Council as well as the LGO (1996,

1999, 2000, 2006, 2013, 2014) and the Information Commissioner's Office ("ICO") (2014). Four other complaints by three other people were also submitted to the LGO between 2001-03. Neither the LGO nor ICO have found any fault with the activities of either Council during their dealings with Footpath No. 28 during the last 20 years. This view is reinforced by the comments of Lang J. in *R.(oao Alan Bowers) v Secretary of State for Environment, Food and Rural Affairs and Central Bedfordshire Council HCJ (QBD) 2016 [CO/6548/2015]*.

23. A significant number of Freedom of Information Act and Subject Access Requests have also been made in relation to the footpath.

The financial burden of Footpath No. 28 on the Council

24. Since 2011 Central Bedfordshire Council has undertaken a variety of administrative tasks in relation to Footpath No. 28 – nearly all at the request of the owner of the land affected by the footpath. To date, Mr. Bowers has not been asked to pay for any Council expenditure even though the Council has had the opportunity to seek reimbursement for use of its discretionary functions. The following table provides a conservative approximate breakdown of where Council costs have been accrued.

Cost area	Approximate cost (since 2011)	Amount that could be recharged to the owner/applicant
Modification order application and Sch. 14 Appeal	£25,900	None as statutory duty
Public Path Extinguishment Order	£13,200	Capped at £2000
Magistrates' Court application	£8,550	£8,550
Advertising of orders	£1,150	£356
Complaints from Mr. Bowers	Over £2700	None as internal function
All information requests	Over £3,700	None as statutory function
Management and legal resource	Estimated at over £6000	None as internal function
Legal advice (excludes advocacy and pre-inquiry work which is included above)	£1,350	None

Approximate Total	Over £62,550	£10,906
Total charged to Mr. Bowers		£0

25. It should be noted that the Council wrote to Mr. Bowers in May 2013 to inform him that he would not be required to contribute to the costs of his applications.

Options for consideration

26. Should the Committee conclude that Counsel's Opinion is compelling enough for it to rescind its resolution of 13 February 2013 (Minute DM/12/330), Mr. Bowers will have exhausted all the legislative avenues currently open to him to have Footpath No. 28 removed from his property.
27. However, to avoid an allegation of the Council acting unreasonably in not performing its statutory or discretionary functions, Mr. Bowers, or another member of the public, should be entitled to apply for the relevant order to remove or alter the footpath if there has been a significant change in circumstances caused by, for example:
- A. A planning application for significant development at 123b Clophill Road which would affect the legal line of Maulden Footpath No. 28
 - B. Substantial improvement/widening of Maulden Bridleway No. 24 to separate non-vehicular and vehicular traffic, or
 - C. The discovery of cogent new evidence not previously considered by the Council which overturns the presumption that the Definitive Map and Statement is correct.
28. It should be noted that leave to re-apply in the abovementioned circumstances does not bind the Council to either approve such an application or to make or confirm an order to stop up or delete the footpath.

Reasons for Potential Decisions

29. Counsel's Opinion provides compelling advice that a re-application to the Magistrates' Court for a stopping up order under Section 116 of the 1980 Act is likely to fail and lead to costs being awarded against the Council. Counsel's Opinion is based on the fact that in 2014 the Inspector hearing the more lenient 2013 public path extinguishment order determined that the order should not be confirmed.
30. In order to avoid acting unreasonably, the Council must still make available legitimate avenues of application – although, given the recent decisions of various Inspectors, the criteria that any application must meet are strictly defined.

Council Priorities

31. This proposal meets the following Council priorities:
 - A. Creating safer communities – by providing a public right of way with a safe crossing point on Clophill Road that is a vehicle-free link to Maulden Woods
 - B. Promoting healthier lifestyles by encouraging use of the countryside by providing easy access to the countryside from local residential developments
 - C. Value for money – by stopping an application to the Magistrates' Court which has been identified as unlikely to succeed and which has a high risk of attracting an award of significant costs against the Council.

Legal Implications

32. Counsel's Opinion indicates that the Council is unlikely to succeed in an application to the Magistrates' Court for an order stopping up Maulden Footpath No. 28. This is due to the stricter test of Section 116 of the 1980 Act in which Justices have to be satisfied that a highway is unnecessary. The Justices will have, as a non-binding material consideration, the 2014 Inspector's decision not to confirm the 2013 Maulden Footpath No. 28 public path extinguishment order; which was based on a more lenient test under Section 118 of the 1980 Act.
33. Counsel has estimated the likelihood of success to be around 20% if the Justices are persuaded to depart from the Inspector's 2014 decision. Such a favourable outcome could, Counsel advises, leave the Justices' decision open to challenge. The overall chance of success may therefore be lower than 20%.
34. The pursuit of an application to the Magistrates' Court in the light of Counsel's Opinion, the Senior Definitive Map Officer's advice, published Council policy on such applications (see Appendix 4), and the decision of the various Inspectors could be perceived as the Council acting unreasonably. As such, there is the potential for the Committee's decision to either be Judicially Reviewed or to be the subject of a LGO ruling.

Financial Implications

35. The Council wrote to Mr. Bowers in May 2013 exempting him from the requirement to pay the Council's administrative and advertising costs for his two applications which to-date total approximately £10,900. These costs have consequently been borne by the Rights of Way Team's budget.
36. If the Council re-applies to the Magistrates' Court without passing on any associated legal costs to the applicant, then it is likely that court fees, legal fees and administrative and advertising costs of the new

application would total in excess of £7000. Should the Council be unsuccessful in its application, it could also have an award of costs made against it by the objectors who are legally represented. An award for costs could exceed £6000. There is no specific allocation in the current Rights of Way Team budget to pay for these costs which combined could exceed £13,000. Consequently, funding the application would either result in other Rights of Way projects being cut back or the application and associated legal costs being paid for out of a wider Highways Service budget over the current and 2017/18 financial year revenue budgets.

Equalities Implications

37. 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 interests of (amongst other things) the protection of the rights and freedoms of others. Whilst the making of an extinguishment order would potentially improve the privacy and security of Mr. Bowers, these improvements must be weighed against the loss of a public right which has been confirmed to exist by the Inspector's 2015 decision and which is legally recorded on the Definitive Map and Statement.
38. 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.
39. The decision by the Development Management Committee to revoke its previous 13 February 2013 decision and for the Council not to apply to the Magistrates' Court for a stopping up 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 the footpath.

Community Safety Implications:

40. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from the recommendations set out in the report. The report proposes that the current decision to seek the stopping up of Maulden Footpath No. 28 be rescinded. It would thus 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. The Council's Senior Traffic and Safety Engineer has appraised both the route of the footpath and bridleway and their junctions with Clophill

Road and a considers both to have similar low levels of risk. Neither route poses a significant threat to the safety or security of users or adjacent land owners and the author is not aware of the Police recording any incidents on either path.

Risk Implications

41. The results of the most recent public inquiry decisions have confirmed that Maulden Footpath No. 28 should not be extinguished and that the footpath is correctly recorded on the Definitive Map and Statement. Counsel's Opinion is very clear that an application to the Magistrates' Court is unlikely to succeed. Consequently any re-application to the Magistrates' Court is likely to seriously prejudice the reputation of Central Bedfordshire Council as the Highway Authority and would expose it to significant financial risks as well as to a potential Judicial Review or LGO ruling.

Conclusion and next Steps

42. The 2014 decision of the Inspector appointed to hear the 2013 public path extinguishment order has made it very difficult for the Council to now successfully re-apply to the Magistrates' Court for a stopping order for Maulden Footpath No. 28. To do so is likely to prejudice the reputation of the Council and to expose it to significant legal and financial risks.
43. Mr. Bowers has exhausted his legal avenues for having Footpath No. 28 removed from his property. The Council should therefore consider the matter closed unless there are significant changes in circumstance which would permit an application for an order to extinguish or delete the footpath; such changes are detailed in the Recommendations.

Appendices:

Appendix 1 - Plan of Maulden Footpath No. 28

Appendix 2 - Detailed timeline of the administrative history of Maulden Footpath No. 28

Appendix 3 - The extracted reasons and conclusions sections for each Inspector's decision report (This is available as a supplement due to its length)

Appendix 4 - Applications Policy: Part 7 – Applications to the Magistrates' Court

Background Papers

None

Reports Previously Considered:

Committee: Development Management Committee - 13 February 2013

Agenda item: The consideration of an application to delete Maulden Footpath No. 28 under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981

Recommendations: Refuse the application by Mr. Alan Bowers to make an order under Section 53(2) of the Wildlife and Countryside Act 1981 to delete Footpath No. 28 under Section 53(3)(c)(iii) of the Act because no new substantive and cogent evidence has been discovered which demonstrates on the balance of probability that a valid non-intention to dedicate existed during the period 1936 – 1956.

DM/12/328 Resolution: That the Committee refuse the application by Mr A Bowers to make an order under Section 53(2) of the Wildlife and Countryside Act 1981 to delete Footpath No. 28 under Section 53(3)(c)(iii) of the Act because no new substantive and cogent evidence had been discovered which demonstrated on the balance of probability that a valid non-intention to dedicate existed during the period 1936 – 1956.

Outcome: M. Bowers' application was refused. Mr. Bowers' subsequent Schedule 14 Appeal was refused following a public inquiry in September 2015. His later appeal for Judicial Review was also refused.

Committee: Development Management Committee - 13 February 2013

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

Recommendations: 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.

DM/12/329 Resolution:

- a. To approve the application of Mr. Bowers to make a public path order under Section 118 of the Highways Act 1980 to extinguish Maulden Footpath No. 28 on the ground that the footpath is no longer needed.
- b. To require the applicant Mr A Bowers to pay the costs associated with the carrying out of works to provide pedestrian refuges on the nearby Maulden Bridleway No. 24 to accommodate increased levels of pedestrian traffic.

Outcome: The 2013 public path extinguishment order was not confirmed following a public inquiry in June 2014.

Committee: Development Management Committee - 13 February 2013

Agenda item: The consideration of an application to seek a Magistrates' Court order to stop up Maulden Footpath No. 28 under Section 116 of the Highways Act 1980

Recommendations: Refuse the application by Mr. Alan Bowers for the Council to make an application under Section 116 of the Highways Act 1980 to the Magistrates' Court for a stopping up order for Maulden Footpath No. 28 between points A-B, on the grounds that:

- a. The application does not meet any of the criteria in the Council's Rights of Way Applications Policy for making an application to the Magistrates' Court.
- b. There is evidence demonstrating that members of the public use the footpath – which provides a pedestrian-only route from the new developments to the south of Clophill Road to the bridleway linking into Maulden Woods and consequently it cannot be considered to be unnecessary.
- c. The land occupied by the footpath and the alternative route has not undergone significant change to enable the Council to disregard the earlier decisions by independent Inspectors who concluded that the bridleway was not a suitable alternative to the footpath.

DM/12/330 Resolution: To approve the application by Mr. Bowers for the Council to make an application under Section 116 of the Highways Act 1980 to the Magistrates' Court for a stopping up order for Maulden Footpath No. 28 on the grounds that:

- a. The application meets the criteria in the Council's Rights of Way Applications Policy for making an application to the Magistrates' Court
- b. Bridleway No. 24 nearby is close enough to be used as an alternative route by those members of the public currently using the footpath
- c. As the bridleway has not undergone significant improvements to enable the Council to disregard the earlier decisions by independent Inspectors who concluded that the bridleway was not a suitable alternative to the footpath, the applicant Mr A Bowers will be required

to pay the costs associated with the carrying out of works to provide pedestrian refuges on the alternative route to accommodate increased levels of pedestrian traffic.

Outcome: The application was withdrawn following legal advice to do so with a view to re-consulting the Development Management Committee at a future date.