

DECISION REPORT
APPLICATION TO EXTINGUISH PART OF THE WIDTH OF FOOTPATH NO.6
BURBAGE UNDER SECTION 118 OF THE HIGHWAYS ACT 1980 AND SECTION
53A OF THE WILDLIFE AND COUNTRYSIDE ACT 1981

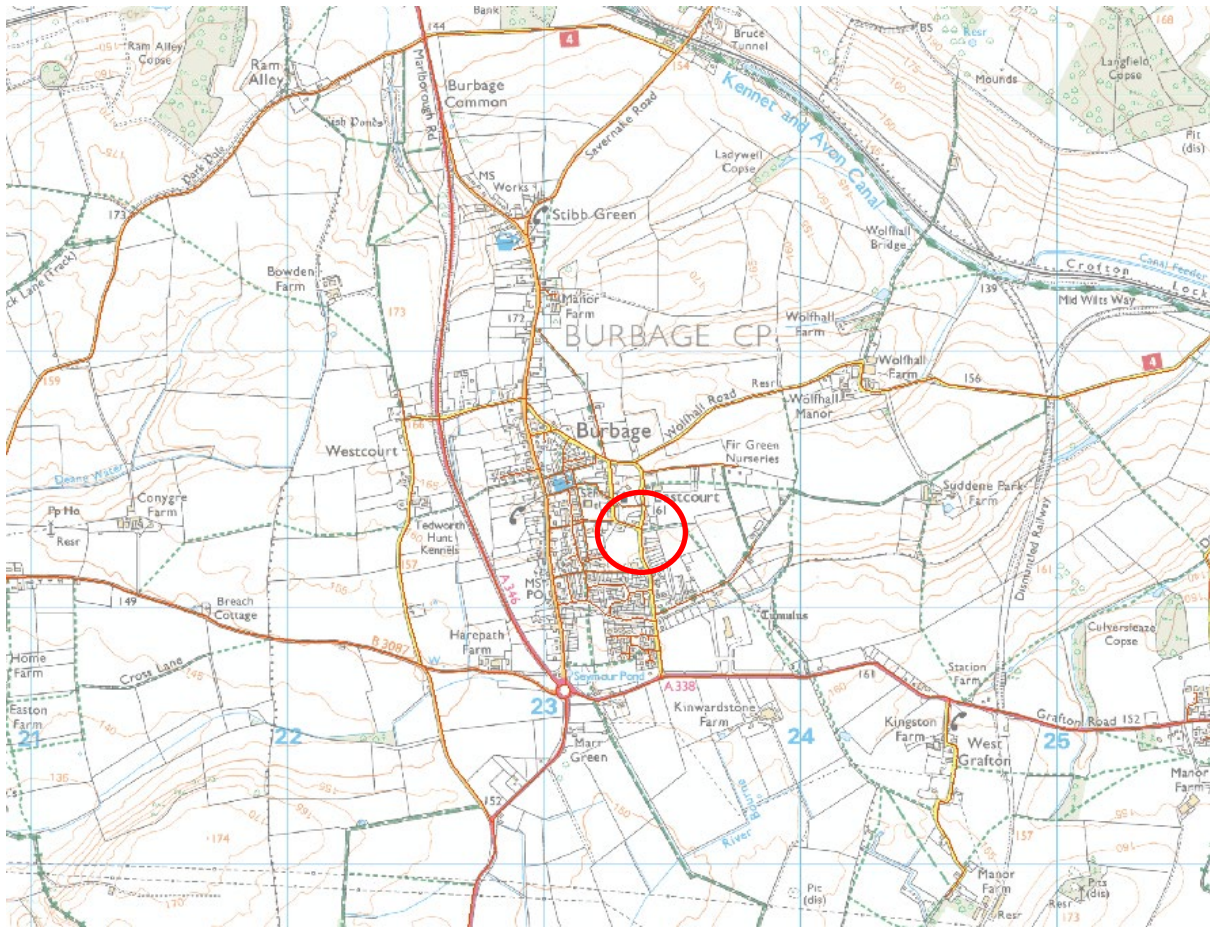
1. Purpose of Report

- 1.1. To consider an application to extinguish part of the width of footpath no.6 Burbage, under Section 118 of the Highways Act 1980 where part of the width of the highway is not needed for public use.
- 1.2. It is recommended that an order be made under Section 118 of the Highways Act 1980 to extinguish part of the width of footpath no.6 Burbage, where it is not needed for public use and under Section 53A of the Wildlife and Countryside Act 1981 to amend the Pewsey Rural District Council Area Definitive Map and Statement dated 1952 and to confirm the order if no representations or objections are received.

2. Relevance to the Council's Business Plan

- 2.1. Working with the local community to provide a rights of way network fit for purpose, making Wiltshire an even better place to live, work and visit.

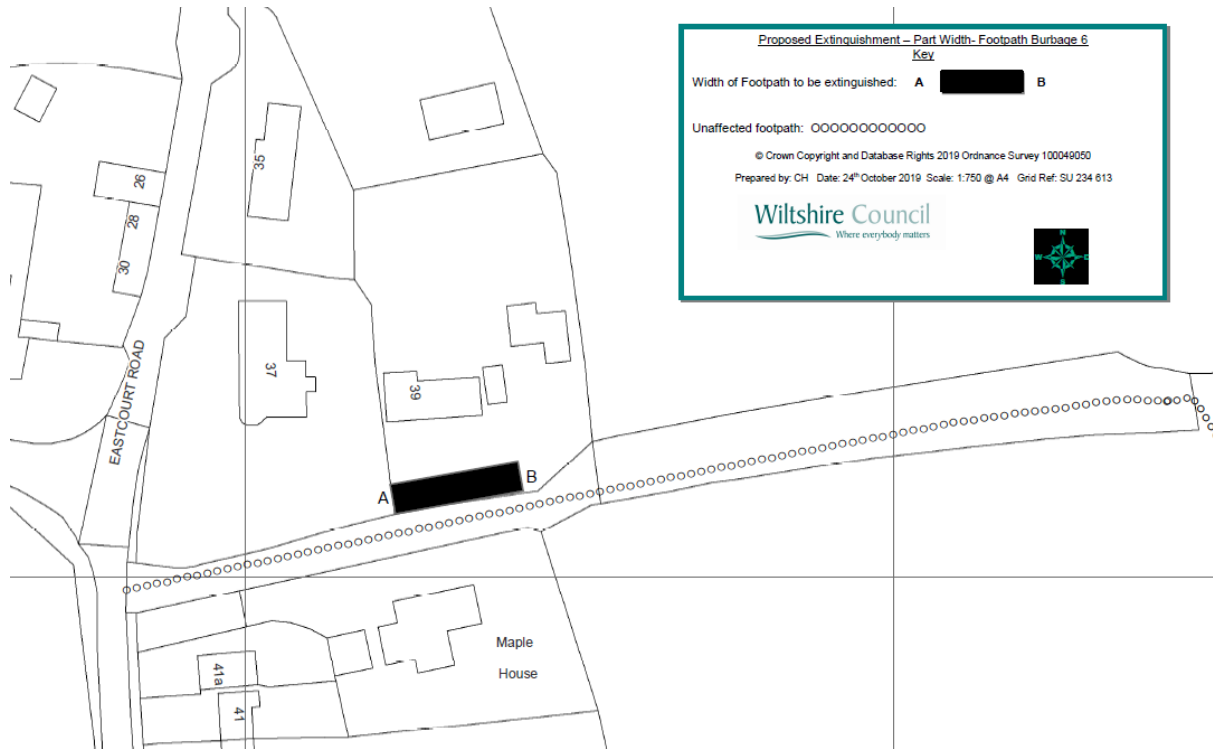
3. Location Plan



Footpath Burbage 6 leads east from Eastcourt Road, Burbage between number 37 and Maple House, Eastcourt Road.

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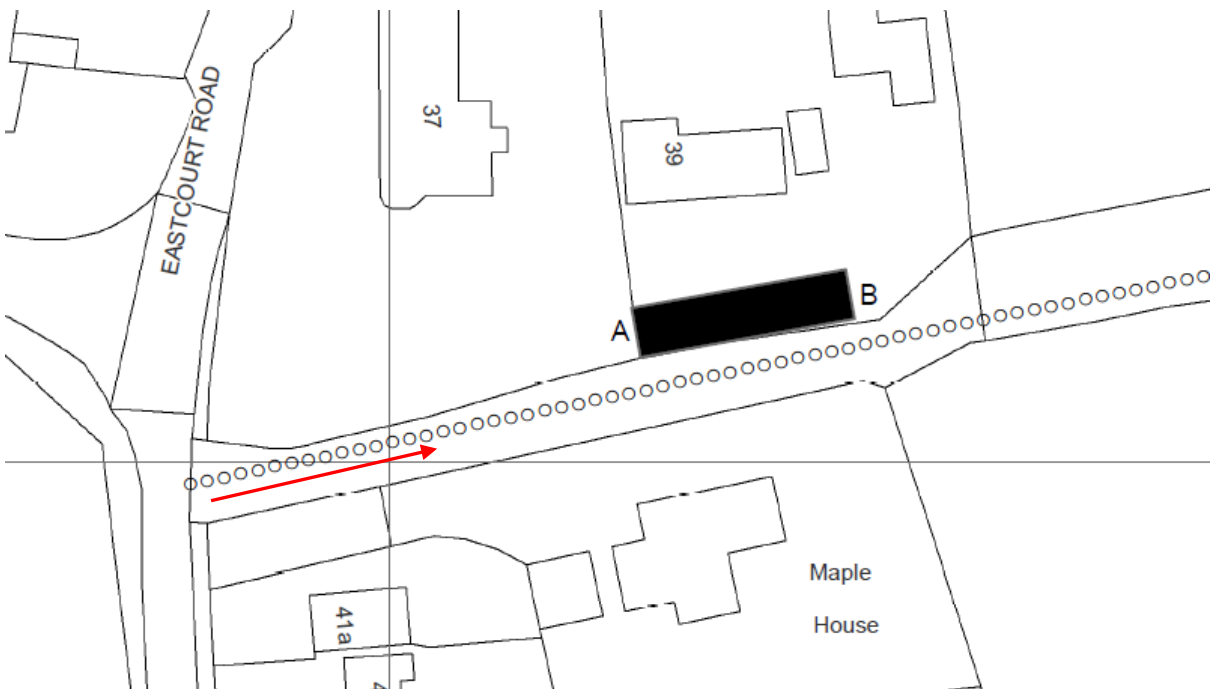
4. Proposed Extinguishment Plan



4.1. The application applies to extinguish the width of footpath Burbage 6 shown by the solid black rectangle on the plan above. The extent of the proposed extinguishment measures 3.3 metres wide by 21 metres long. If successful, this would leave a recorded width for the footpath immediately south of the extinguished section of 4.7 metres.

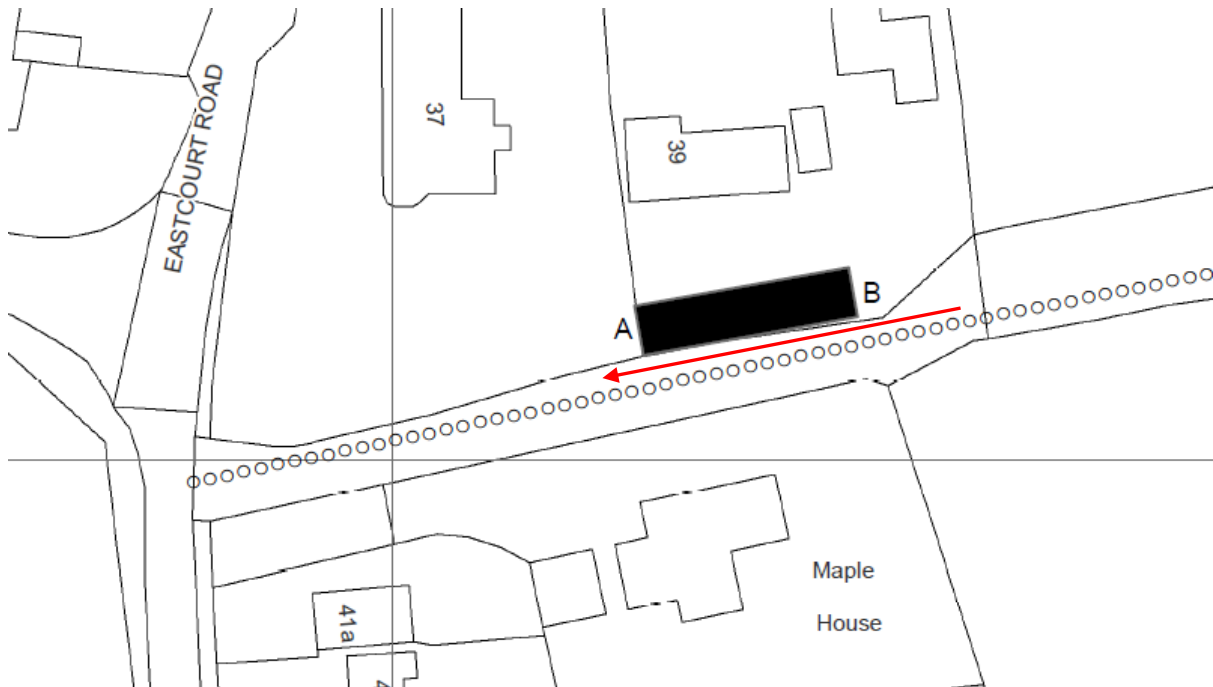
5. Photographs

5.1



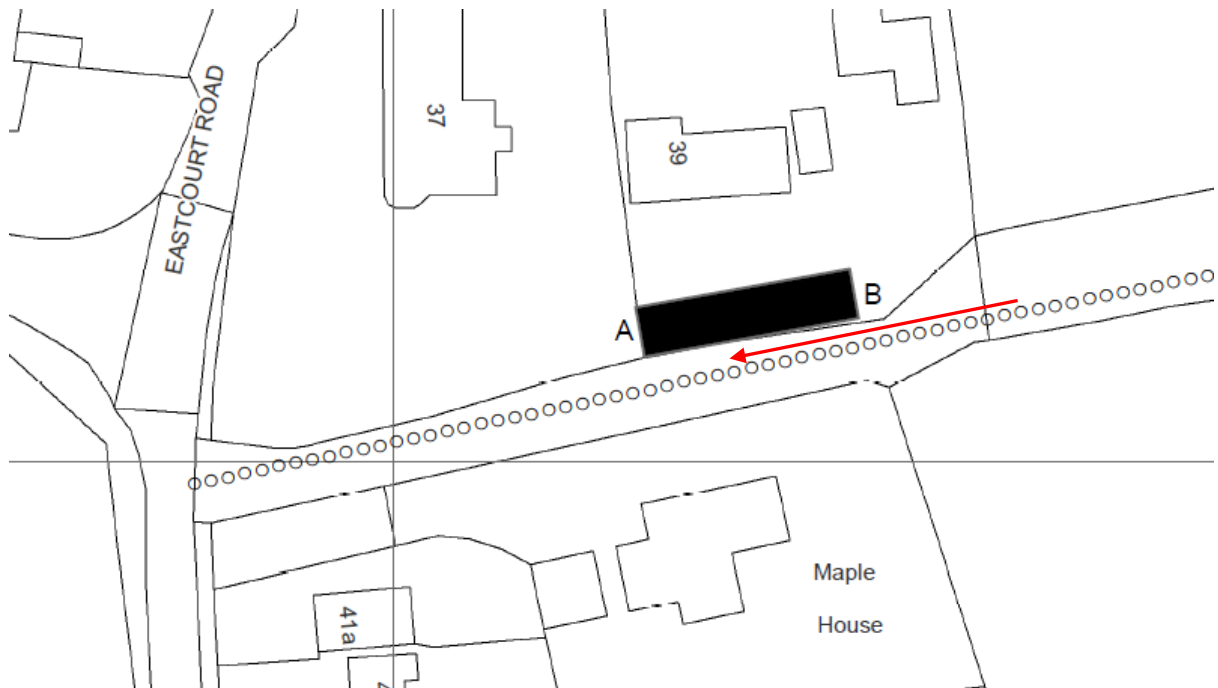
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5.2



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5.3



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5.4. Approximate area to be extinguished marked by red arrows below.



6. Registered Landowners

6.1 Zoe Turner of Hollybrook, 39 Eastcourt Road, Burbage, Marlborough SN8 3AT who is also the applicant.

7. Legal Empowerment

7.1. The application to extinguish part of the width of footpath Burbage 6, is made under Section 118 of the Highways Act 1980. This applies where a footpath, bridleway or restricted byway, or part of that highway, is not needed for public use.

7.2. Section 118 of the Highways Act 1980 states:

“118. Stopping up of footpaths, bridleways and restricted byways.

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(1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or a special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a “public path extinguishment order”.

(2) The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121(2) below.

(3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Secretary of State and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.

(4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.

(5) Where, in accordance with regulations made under paragraph 3 of the said Schedule 6, proceedings preliminary to the confirmation of the public path

extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-

(a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use, or
(b) under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public,
the council or the Secretary of State, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order or rail crossing diversion order would provide an alternative path or way.

(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.

(6A) The considerations to which-

(a) the Secretary of State is to have regard in determining whether or not to confirm a public path extinguishment order, and
(b) a council are to have regard in determining whether or not to confirm such an order as an unopposed order,
include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.”

7.3. Section 51 and paragraph 2 of Schedule 5 to the Countryside and Rights of Way Act 2000 insert a new section 53A into the Wildlife and Countryside Act 1981. Previously where the Highway Authority, which was also the Surveying Authority, made an order which changed the network of public rights of way, e.g. a public path extinguishment order under Section 118 of the Highways Act 1980, they were subsequently required to make a further order under

Section 53 of the Wildlife and Countryside Act 1981 to record the change to the network on the definitive map and statement. The addition of Section 53A enables the Authority to include in public path orders satisfying the criteria in Section 53A(1), provisions to modify the definitive map and statement, thereby avoiding the need for a separate modification order. Officers propose that where a public path order is made under Section 118 of the Highways Act 1980, extinguishing Path no.6 Burbage, provisions are included within the same order to modify the definitive map and statement of public rights of way simultaneously. Section 53A of the Wildlife and Countryside Act 1981 states:

“53A Power to include modifications in other orders.

- (1) *This section applies to any order-*
 - (a) *which is of a description prescribed by regulation made by the Secretary of State,*
 - (b) *whose coming into operation would, as regards any definitive map and statement, be an event within section 53(3)(a).*
 - (c) *which is made by the surveying authority, and*
 - (d) *which does not affect land outside the authority’s area.*

- (2) *The authority may include in the order such provision as it would be required to make under section 53(2)(b) in consequence of the coming into operation of the other provisions of the order.*

- (3) *An authority which has included any provision in an order by virtue of subsection (2)-*
 - (a) *may at any time before the order comes into operation, and*
 - (b) *shall, if the order becomes subject to special parliamentary procedure,*
withdraw the order and substitute for it an order otherwise identical but omitting any provision so included.

- (4) *Anything done for the purposes of any enactment in relation to the order withdrawn under subsection (3) shall be treated for those purposes as done in relation to the substituted order.*
- (5) *No requirement for the confirmation of an order applies to provisions included in the order by virtue of subsection (2), but any power to modify an order includes power to make consequential modifications to any provision so included.*
- (6) *Provisions included in an order by virtue of subsection (2) shall take effect on the date specified under section 56(3A) as the relevant date.*
- (7) *Where any enactment provides for questioning the validity of an order on any grounds, the validity of any provision included by virtue of subsection (2) may be questioned in the same way on the grounds –*
 - (a) *that it is not within the powers of this Part, or*
 - (b) *that any requirement of this Part or of regulations made under it has not been complied with.*
- (8) *Subject to subsections (5) to (7), the Secretary of State may by regulations provide that any procedural requirement as to the making or coming into operation of an order to which this section applies shall not apply with modifications prescribed by the regulations, to so much of the order as contains provision included by virtue of subsection (2).*
- (9) *Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”*

8. Background

- 8.1. Wiltshire Council are in receipt of an application dated 19th July 2019, made under Section 118 of the Highways Act 1980, to extinguish part of the width of footpath Burbage 6, on the grounds that it is not needed for public use. The application is made by Zoe Turner of Holybrook Cottage, 39 Eastcourt Road, Burbage, Marlborough, SN8 with Blake Morgan LLP acting as agent.
- 8.2. It is proposed to extinguish a section measuring 3.3 metres by 21 metres of the footpath of the existing 8 metre width at this point of the footpath, leaving a minimum of 4.7m of highway available to the public on the affected section of the footpath.

9. Public Consultation

- 9.1. A public consultation exercise regarding the extinguishment proposals was carried out on 24th October 2019, with a closing date for all representations and objections to be received in writing by 22nd November 2019.
- 9.2. The consultation included the landowners, statutory undertakers, statutory consultees, user groups, close neighbours and other interested parties including the Wiltshire Council Member for Burbage and Burbage Parish Council.
- 9.3. The following consultation replies were received, (all consultation responses are available to be viewed in full with the Rights of Way and Countryside Team, Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN):
- 9.4. Mr McNicholas Of Maple House, Eastcourt Road, Burbage.

Your ref: 2019/14 – Proposed width extinguishment of footpath Burbage 6

Dear Mr Harlow,

The proposal to reduce the width of a section of the Burbage footpath 6 states that, "it is not used by the public and is therefore not required for public use". This statement is incorrect. The full width of the public footpath has and continues to be used by the public including myself.

The recent redevelopment of number 39 included the removal of a hedge that marked the edge of the footpath and front boundary of number 39. The removal of this boundary, the failure to reinstate it, and the laying of gravel where there was once a garden has subsequently blurred the boundary between number 39 and the public footpath. Rather than remove the area of footpath that IS used by the public, the path should be retained and clear demarcation and signage reinstated.

The footpath also acts as an important buffer at the edge of the conservation zone, and should be maintained to prevent it being used as part of the 6-8 car and lorry park that the front garden of number 39 has become since it's redevelopment.

Yours sincerely

Anthony McNicholas

9.5 Burbage Parish Council:

Dear Mr Harlow,

The Parish Council inspected the footpath, and are not happy to change the width of the footpath as drains run under that strip of land.

They felt that if the owners of the adjoining property are concerned about privacy, then they may wish to consider reinstating the boundary fence.

*Regards
Joyce*

*Joyce Turner
Burbage Parish Clerk
For, and on behalf of,
Burbage Parish Council.
clerk@burbage-pc.org.uk
01672 563718*

9.6 Peter Gallagher – The Ramblers.

Dear Craig

Thank you for your letter dated 24 October. We have no objection to the application.

Regards

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Peter Gallagher
Footpaths and Walking Environment Officer
Swindon and North East Wiltshire Group
The Ramblers

9.6. The following replies were received from statutory undertakers:

1) Openreach – online utilities search undertaken 20th December July 2019:
No Plant directly affected.

2) Scottish and Southern Electricity Networks – online utilities search
undertaken 18th December 2019:
Cables present at location – written consent requested.

3) *Wales and West Utilities - online utility search conducted 17th December:*

No apparatus in the area of enquiry.

4) Wessex Water - online utilities search undertaken 18th December 2019:
No plant at location.

5) www.digdat.co.uk – online utilities search undertaken 19th December 2019:
No Virgin Media plant at location.

6) Wiltshire Council Ecology database – search undertaken 18th December
2019:
No areas of special ecological/environmental interest are identified in the
vicinity of the proposed extinguishment.

9.7. Where plant is located in the vicinity of the proposed public path
extinguishment order, Section 121(4) of the Highways Act 1980 states that the
Secretary of State may not make or confirm an order and an Authority may

not confirm an order unless affected statutory undertakers have consented to the making or confirmation of the order, therefore written consent to the proposals has been requested from those undertakers with plant at location, Scottish and Southern Electricity Networks must be forthcoming with consent before the Authority can confirm the order. The order regulations also contain provision for statutory undertakers to maintain access to plant.

10. Main Considerations for the Council

- 10.1. Section 118 of the Highways Act 1980 requires the order making authority to be satisfied that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use.

- 10.2. The Council are satisfied that it is expedient to extinguish part of the width of footpath Burbage 6, where the remaining width is sufficient for public use and exceeds the requirements, as contained in Wiltshire Council policy in the Countryside Access Improvement Plan, for the width of a new footpath at 2 metres. The footpath will retain a width of 4.7 metres at the point of the width extinguishment. A width of 4.7 metres is a more than reasonable width for the public to pass and repass on a public footpath. The path continuing east from the point of the extinguishment will retain its width of 8 metres. The width extinguishment will not affect any member of the public using the footpath as no deviation will be required in any manner walking from either direction. To use the proposed section to be extinguished would require a deliberate deviation. Walking from Eastcourt Road east along the path along the fenced in driveway, as seen at 5.1 of this report, a user would need to make a deliberate movement north once reaching the end of the fence line and hedge towards the property rather continuing in a naturally straight direction to the gateway as seen at 5.3 of this report. Officers consider that the legal test for making an order, as set out at Section 118(1) of the 1980 Act, is met in this

case, i.e. it is expedient that part of the path or way should be stopped up on the grounds that it is not needed for public use.

- 10.3. An order shall not be confirmed unless the authority or the Secretary of State are satisfied that it expedient to do so, having regard to the extent (if any) to which it appears that the path or way would, apart from the order be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation (Section 118(2) Highways Act 1980).
- 10.4. The land subject to the public path extinguishment application is in the ownership of the applicant Ms Zoe Turner, who has given written consent for the proposals, it is therefore considered unlikely that any claims for compensation will be received. Additionally, the applicant has agreed to pay any compensation which may arise in consequence of the coming into operation of the order.
- 10.5. To assist in its consideration likely public use of the path, as outlined at Section 118(2) of the 1980 Act, the Council consulted user groups, the landowner, immediate neighbouring properties and the Parish Council regarding the proposal, the contents of which can be seen at 9. of this report.
- 10.6. The Planning Inspectorate Advice Note No.9 *“General Guidance on Public Rights of Way Matters”*, suggests that “need” is the greater test in this case and *“At the confirmation stage, the decision-maker does not have to be satisfied that the way is not being used in order to conclude that it is not needed for public use. An Inspector could confirm an order even if he/she thought the way was likely to be used to a limited degree but was not actually*

needed.” Officers consider this is likely to be the case at Burbage 6. The section of path to be extinguished may be used occasionally by users of the path who do meander while using the path. It is deemed likely that the vast majority of users would not use the section to be extinguished, as mentioned previously to use this section would require a deviation from the natural line of walking the route at this location. It may be used to some degree but is not needed for public use where more than adequate path remains following extinguishment. The extent of the remaining highway will exceed Wiltshire Council policy of a width of 2 metres for a new footpath or a path bordered on one side being 3 metres, with a width of 4.7 metres left for public use.

- 10.7. At subsection 6A of Section 118 of the 1980 Act, the Secretary of State or the Council in determining whether or not to confirm the order, should have regard to any material provision of a rights of way improvement plan prepared by any local Highway Authority, in this case the Wiltshire Countryside Access Improvement Plan 2015 – 2025 (CAIP) . The CAIP sets out Wiltshire Council policies relating to rights of way including public path order applications. At section 1B.2 of the Policies section of the document, it is stated that:

“A diverted/newly created path should meet the Council’s minimum standard width:

Footpath: 2 metres;

Footpath bordered on one side or both sides (e.g. fence, wall or hedge): 3 metres;

Bridleway: 4 metres;

Restricted Byway: 5 metres.”

Under the extinguishment application proposals, the minimum width of footpath Burbage 6 at the point of extinguishment to be retained is 4.7 m, which exceeds Wiltshire Council requirements for a diverted/newly created bridleway or restricted byway.

- 10.8. Part 4 of the policies section *“Maintenance of public Rights of Way”* states:
“When considering the replacement or installation of new gates and stiles, the council will adopt the least restrictive option, (i.e. gap is preferable, then gate, then stile). This will be in accordance with the expected level and type of use of the path, and the management of the land.”

This proposal does not introduce any new obstructions to the path and still allows more than adequate width for users of the path.

- 10.9. The CAIP includes a strengths, weaknesses, opportunities and threats (SWOT) analysis of the rights of way network in Wiltshire, produced in consultation with representatives from user groups. Under weaknesses it is recognised that:

“The network is largely historic and although it has evolved, in places it does not meet the present and likely future needs of users and potential users.”

“Processing legal orders to change rights of way brings positive changes to the network, e.g. it protects ancient routes and diverts routes to meet modern requirements”, is recognised as an opportunity for the network.

The rights of way network in Wiltshire is historic, which at times does not meet the needs of users. This is also applicable to landowners, e.g. where land use has changed. The legislation available to amend the rights of way network through extinguishment, diversion and creation, recognises this. The proposed extinguishment acknowledges the historic width of the footpath which was recorded as a result of a DMMO (definitive map modification order) confirmed in 2013, while taking into account the modern use of the footpath.

- 10.10. In making extinguishment orders, Sections 29 and 121(3) of the Highways Act 1980 require authorities to have due regard to the needs of a) agriculture and forestry and b) the desirability of conserving flora, fauna and geological and physiographical features. Section 40 of the Natural Environment and Rural Communities Act 2006 also places a duty on every public authority in exercising its functions, to have regard to the conservation of biodiversity, as far as is consistent with the proper exercise of those functions. In this section, conserving biodiversity includes that in relation to a living organism, or type of habitat and restoring or enhancing a population or habitat.
- 10.11. There are no considerations relating to forestry in the extinguishment of footpath Burbage 6 (part). Considering agricultural concerns, the continuation of the footpath east from the site of the proposal may give access to the field south of the footpath for the owner of that field. The proposed extinguishment will leave 4.7 metres of footpath which is just as wide as the current physical available width of the path leading from Eastcourt Road to the proposed extinguishment. Therefore, the proposed extinguishment will not affect any access and agricultural use of that field.
- 10.12 With regard to conserving flora, fauna and geological and physiographical features and biodiversity, the site does not lie within an area of special ecological interest.
- 10.13 The Countryside Access Officer for the area has been consulted and has no objection to the proposal.

11 Comments on the Objections

- 11.1. Two objections at the initial consultation phase have been received from Mr McNicholas and Burbage Parish Council whilst Peter Gallagher representing The Ramblers responded stating they have no objection.
- 11.2 Mr McNicholas's objections can be seen at 9.4 of this report. Mr McNicholas claims to use the section of path which is to be extinguished. This may be the case but as stated at 10.6 of this report the way may be used to a limited degree but the actual need for the path must be considered even if it is used to a limited degree. In the case of Burbage 6 officers can see no case that the section to be extinguished is needed for public use as there will be 4.7 metres of path available if the extinguishment is confirmed at that point of the footpath. Mr McNicholas also states no.39, who are the applicants could reinstate the previous boundary. It appears no.39 purchased the section of path to be extinguished in 2017 and as such the property boundary does extend to the boundary of the proposed extinguishment. Concerns regarding the section being turned into a car park for the property are noted, however on inspection the section of path to be extinguished has not been parked on or blocked in any manner, however if the section is extinguished the owner will be entitled to park vehicles on this section. This will not have a significant adverse effect on users of the footpath who will have 4.7 metres of unobstructed path to use. Mr McNicholas also says the path forms a buffer for a conservation zone, officers are unsure which conservation zone is being referred to, however the area of Burbage does fall within the North Wessex Downs AONB, who have been consulted and not objected to this proposal. The area does not form part of a country park, SSSI, or any other designation to officer's knowledge.
- 11.3 Burbage Parish Council objected at the consultation phase on the grounds that drains run under the path to be extinguished and the property can reinstate the old boundary if they desire privacy.

Utility checks have been undertaken and the services that do exist have consented to the proposal. The extinguishment of the public rights over the surface of the right of way will not affect the maintenance of any drains under the surface.

Any privacy issues are not stated as part of the reason for the application for the extinguishment and are not part of the legal tests which must be considered. Only the need for the path can be considered and as stated previously in the report, in this circumstance it appears there is no obvious need for the 8 metre width of the footpath and the 4.7 metres of width left will be more than sufficient for public use.

11.4 The Ramblers representative for the area has stated they have no objection to the proposal.

11.5 If an order is made to extinguish the width of footpath proposed in this application the order will be advertised on site and in a local newspaper giving the opportunity for further representations to be made at that point.

12. Overview and Scrutiny

12.1. Overview and Scrutiny engagement is not required where there is a statutory process to be followed, as set out under Section 118 of the Highways Act 1980 and Schedule 6 to the Act.

13. Safeguarding Considerations

13.1. If an order to extinguish part of Footpath Burbage 6 is made, Wiltshire Council will follow procedures set out at Schedule 6 of the Highways Act 1980, which outline the provisions as to making, confirmation, validity and date of operation of certain orders relating to footpaths, bridleways and restricted

byways, including notice of the making and confirmation of the order. In doing so Wiltshire Council will fulfil its safeguarding considerations.

14. Public Health Implications

14.1. No public health implications have been identified as a result of the extinguishment proposal.

15. Procurement Implications

15.1. The making of an order under section 118 of the Highways Act 1980, does have financial implications for the Council which are discussed at 19.

16. Environmental and Climate Change Considerations

16.1. There are no known environmental or climate change considerations associated with the proposals. The Wiltshire Council Ecology database has been consulted and no areas of special ecological/environmental interest are identified in the vicinity of the proposed diversion.

17. Equalities Impact of the Proposal

17.1. DEFRA Circular 1/09, at 5.4. states that “...*all aspects of Public Path Orders (unlike Definitive Map Modification Orders which represent what is believed to have been the route, width and structures existing when a way was dedicated) will be affected by the DDA (Disability Discrimination Act 1995), particularly in relation to the limitations and conditions to be defined in the statement.*”

17.2. The Disability Discrimination Act (DDA) is now superseded by the Equality Act 2010, which places a duty upon all authorities as follows:

“(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result in socio-economic disadvantage.”

17.3. The protected characteristics include disability and the Act places a duty on authorities to make reasonable adjustments to avoid disadvantage. Section 149 of the Act details the “public sector equality duty” placed upon a public authority, to:

“in exercise of its functions, have due regard to the need to-

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”*

17.4. The Wiltshire Council “Wiltshire Countryside Access Improvement Plan 2015 – 2025 Rights of Way Improvement Plan 2” (CAIP), also sets out Wiltshire Council’s access for all and gaps, gate and stile policy (policy 7, page 10), stating that *“disabled people should have equal opportunities to use public rights of way and the wider access provision where this is practical”*, and the *“least restrictive option”* principle needs to be applied when a new route is being created. Officers are satisfied that there are no additional limitations and conditions placed upon public use of footpath Burbage 6 as a result of the extinguishment of part of its width. At its minimum the path would retain a width of 4.7m, which exceeds Wiltshire Council policy for a newly created footpath of 3m if bounded by a fence, as contained within the CAIP.

18. Risk Assessment

- 18.1. No risks to the public are identified in making a public path extinguishment order. The financial risks to the Council are considered at 19.

19. Financial Implications

- 19.1. The Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (SI 1993/407) amended by Regulation 3 of the Local Authorities (Charges for Overseas Assistance and Public Path Orders) Regulations 1996 (SI 1996/1978), permit authorities to charge applicants costs in relation to the making of orders, including public path diversion orders. Authorities may charge only the actual costs incurred.
- 19.2. The applicant has agreed in writing to meet the actual costs to the Council in processing the order, including advertising the making of the order and should the order be successful, the confirmation of the order in one local newspaper.
- 19.3. The applicant has agreed in writing to pay any compensation which may arise in consequence of the coming into operation of the order, (although this is not anticipated where the registered landowners have been contacted and have raised no objection to the application).
- 19.4. The applicant has also agreed in writing to pay the costs of any associated site works incurred by the Council on completion of the application. However, no works will be required.
- 19.5. If an extinguishment order is made under Section 118 of the Highways Act 1980 and there are no objections to the making of the order, Wiltshire Council may itself confirm the order and there are no additional costs to the Council.

- 19.6. If there are outstanding objections to the making of the order which are not withdrawn and the Council continues to support the making of the order, the order will be forwarded to the Secretary of State for decision. The outcome of the order will then be determined by written representations, local hearing or local public inquiry. If the case is determined by written representations, the cost to the Council is negligible, however, where a local hearing is held the costs to the Council are estimated at £200 - £500 and where the case is determined by local public inquiry costs are estimated at between £1,000 and £3,000.
- 19.7. The making of a public path extinguishment order under the Highways Act 1980 is a discretionary power for the Council rather than a statutory duty, therefore a made order may be withdrawn at any time without referral to the Secretary of State, up until the point of confirmation, if the Council no longer continues to support the order, for example, where it is considered that the proposals no longer meet the legal tests for extinguishment as set out under Section 118 of the 1980 Act.

20. Legal Considerations

- 20.1. If the Council makes a public path extinguishment order and objections are received, where the Council continues to support the making of the order, it will be forwarded to the Secretary of State for determination, which may lead to the order being dealt with by written representations, local hearing or local public inquiry. The Inspectors decision may be subject to challenge in the High Court.
- 20.2. Where the Council refuses the application, there is no right of appeal for the applicant, however, any decision of the Council is open to judicial review.

20.3. The making of a public path extinguishment order is a discretionary power for the Council rather than a statutory duty, therefore an order may be withdrawn at any time up until the point of confirmation, without referral to the Secretary of State, where the Council no longer continues to support the making of the order.

21. Options Considered

21.1. The options available to the Council are as follows:

(i) To refuse to make the order, where it is considered that the legal tests, as set out under Section 118 of the Highways Act 1980, are not met, i.e. that part of the path is needed for public use,

or

(ii) To make an order to extinguish part of the width of footpath Burbage 6 under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, on the grounds that the extent of highway proposed to be extinguished is not needed for public use.

22. Reasons for Proposal

22.1. It is proposed to make a public path extinguishment order under Section 118 of the Highways Act 1980, to extinguish part of the width of footpath Burbage 6, where it is not needed for public use. The width of highway to be retained is 4.7 metres, which far exceeds the width requirements for a new footpath, as set out within Wiltshire Council policy in the CAIP.

22.2 The section of path to be extinguished may be used by a small number of users but is deemed it is not needed for public use as sufficient width will be

retained. The extinguishment will not negatively impact users of the footpath and officers deem the section to be extinguished is not needed for public use as must be considered as per s.118 of the Highways Act.

23. Recommendation

- 23.1. That an order to extinguish part of the width of footpath Burbage 6 be made under Section 118 of the Highways Act 1980 and Section 53A of the Wildlife and Countryside Act 1981, where that part of the path is not needed for public use and if no objections or representations are received, the order be confirmed by Wiltshire Council as an unopposed order.

Craig Harlow
Definitive Map Officer
23rd December 2019