

WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

4 FEBRUARY 2015

**HIGHWAYS ACT 1981
PROPOSED EXTINGUISHMENT OF A SECTION OF WEST ASHTON FOOTPATH 1
(PART) AND CREATION OF FOOTPATH IN SUBSTITUTION**

Purpose of Report

1. To:
 - (i) Consider and comment on the duly made objection relating to the above proposal.
 - (ii) Recommend that the Wiltshire Council West Ashton 1 (part) Extinguishment Order 2014 and the Wiltshire Council West Ashton 1 (part) Creation Order 2014 be submitted to the Secretary of State for Environment, Food and Rural Affairs with the recommendation that the Orders be confirmed and the objection is dealt with under the written representation scheme.

The effect of the Orders is shown on the plan attached at **Appendix A**.

Relevance to the Council's Business Plan

2. Working with the local community to provide a rights of way network fit for purpose.

Background

3. On 29 July 2014 an Order was made under Section 53 of the Wildlife and Countryside Act 1981 seeking to modify the route of part of West Ashton Footpath 1. An objection by Mr Francis Morland was received to the making of the Order. The Order and the objection made to it was the subject of a report to the Western Area Planning Committee on 5 November 2014, attached at **Appendix B**. Under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 the Surveying Authority is not required to prove beyond all reasonable doubt that rights exist. The burden of proof lies on the 'balance of probability', i.e. that it is more likely than not that the rights exist. An Order may be made under the section where rights can be 'reasonably alleged to subsist'; however, at the confirmation of an Order a more stringent test applies, that public rights 'subsist'. The wording for Section 53(3)(c)(iii) is different, as the Surveying Authority has to be satisfied that there 'is' no public right of way shown on the Definitive Map. This burden of proof has not been satisfied and the Committee resolved that the Order be forwarded to the Secretary of State for Environment, Food and Rural Affairs for determination with the recommendation that the Order is not confirmed.

4. The line of West Ashton Footpath 1 through the grounds of Manor View has been unavailable for public use for a number of years and it would appear the public have been using a route which has been provided between the properties known as Montrose and 17A Bratton Road. The owner of Manor View is trying to sell her property and the location of the footpath through the building and grounds of the property is hampering the sale. In order to regularise the situation it is now proposed to extinguish the section of Footpath 1 through Manor View and to create a path to follow the route currently available on the ground. The changes will be sought through the provisions of the Highways Act 1980 but if successful will have the same effect of moving the footpath as the Order made under the Wildlife and Countryside Act 1981 sought to do.

Main considerations for the Council

5. When considering whether to confirm a Creation or Extinguishment Order, the Secretary of State or the Council must give consideration to any material provision within a rights of way improvement plan for the relevant area.
6. An initial consultation with the usual consultees was carried out on the proposal to amend the Definitive Map and Statement to change the position of the footpath from its current position on the Definitive Map to reflect the route currently used by the public and no objections or representations were made. The Parish Council supports the proposal.
7. Officers are not aware of any complaints from members of the public concerning the unavailable route of Footpath 1 through the grounds of Manor View. The existence of a clearly defined route, which has been signed as a public footpath by the Council, which provides an adequate substitute for the route through Manor View, is probably the reason why no complaints have been received.
8. On 8 December Mr Morland e-mailed the Council to state:

“I am uncertain that it is lawful for Wiltshire Council to exercise its order-making powers to create further proposals which are clearly inconsistent with The Wiltshire Council West Ashton 1 (Part) Rights of Way Modification Order 2014 made on 29 July 2014, which it resolved on Wednesday 5 November 2014 should be submitted to The Secretary of State for the Environment, Food and Rural Affairs for determination, and which remains extant and capable of confirmation. In any event, I consider that this ‘multiple choice’ approach to exercising order-making powers is highly confusing and uncertain as to the outcome (so that it is impossible for objectors adequately to assess the overall effect of what is proposed), and therefore fundamentally unsatisfactory and unacceptable.

The width of the 56 metres of footpath to be stopped-up by the Extinguishment Order (as not needed for public use) is undefined on the Definitive Map and Statement in 1972, was intended to be of full width (viz. Not less than 2 metres). Accordingly, its stopping-up should not take place unless/until an alternative route of the same or greater width throughout is available.

The Creation Order defines approximately 40 metres of the public footpath described in it as having a width of 2 metres, but the first 33 metres of its length from Bratton Road as having a width varying between 1.3 and 1.6 metres only. There is no adequate reason for restricting the width of the public footpath to be created less than 2 metres throughout.

I reserve the right to amend or add to these particulars of my objection to either or both of the orders in due course.”

9. As explained in paragraph 3 above, the Western Area Planning Committee on 5 November noted there was insufficient evidence available to the Council for it to recommend in the light of Mr Morland’s objection that the Definitive Map Modification Order be confirmed by the Secretary of State. If the Order was capable of being confirmed then the Council would have supported it. The effect of the Definitive Map Modification Order on the ground is to change the Definitive Map and Statement to reflect the location of the used footpath that exists. The effect of the Extinguishment and Creation Orders, if confirmed, would result in recording the footpath which exists on the ground as a public right of way, i.e. the same aim as the Definitive Map Modification Order. All three Orders seek to achieve the same solution and the plans attached to the Orders show the same proposal so clearly which makes it difficult to understand why Mr Morland believes it is ‘impossible for objectors adequately to assess the overall effect of what is proposed’.
10. Mr Morland states that the width of the footpath is undefined on the Definitive Map and Statement but in 1972 the new route created at the second and Special Review was intended to be the full width viz not less than 2 metres. Officers have seen no evidence to substantiate this statement; there is no minimum width for a footpath and in 1972 the unit of measurement in the definitive statements was imperial, not metric. Officers are not aware of any law or council policy at that time that required the width to be not less than 2 metres. Officers have, however, found useful practical guidance on making pedestrian access user friendly in the Department of Transport’s Guide to best practice on access to pedestrian and transport infrastructure first published in December 2005. The guide draws together a range of advice, guidance and codes of practice drawn up by highway engineers and others in local authorities and the transport industries on the best ways to meet the needs of disabled people. In providing for the needs of disabled people the designs and advice often meet the needs of many other people, i.e. people travelling with young children or luggage. The guide identifies a walker needs a width of 700mm, a person using a stick 750mm, someone accompanied with a dog 1100mm and a visually impaired person being guided by another person a width of 1200mm. The width of the path which exists on the ground, which is the subject of the Creation Order, has a width of 2 metres for 40 metres of its length continuing with a width varying from 1300mm to 1600mm. Officers believe the width of the path on the ground is an adequate width for the normal footfall the paths receives and is in line with government advice.

Safeguarding Considerations

11. Safeguarding considerations are not considerations that can be taken into account when the Council is considering Orders under Sections 26 and 118 of the Highways Act 1980; however, it is not considered the report's recommendation will have any detrimental effects on safeguarding.

Public Health Implications

12. The implications of the recommendation on public health are not considerations that can be taken into account under Sections 26 and 118 of the Highways Act 1980; however, it is not considered the report's recommendation will have any adverse implications on public health.

Environmental and Climate Change Considerations

13. It is not considered the report's proposal will have any environmental impacts.

Risk Assessment

14. The recommendation of the report is to forward the Orders to the Planning Inspectorate for determination by the Secretary of State with the recommendation the Orders be confirmed. To abandon the Orders and leave the existing anomaly on the Definitive Map and Statement could be detrimental to the Council's reputation and would not be in the public interest.

Financial Implications

15. If the Orders are submitted to the Secretary of State for determination the costs accrued would fall to Wiltshire Council. If the Orders were to be determined by written representations there would be little additional costs to the Council but the cost of a Hearing could be in the region of £300 and a Public Inquiry £3000-£5000.

Legal Implications

16. Section 26 of the Highways Act 1980 allows the Council to make an Order to create a footpath where it appears to the authority that there is a need. Before making an Order, an authority must be satisfied that it is expedient that a way should be created, having regard to the extent to which it would add to the convenience of persons resident in the area, and the effect that the creation would have on the rights of persons interested in the land, account being taken of the Act's provision as to compensation. In making an Order under Section 26 of the Highways Act 1980 the authority should give consideration to any work that will be required to bring the way in to a condition fit for public use.
17. Section 118 of the Highways Act 1980 enables the Council to make an Order to extinguish a footpath if the Council considers it is expedient that the way should be stopped up because it is not needed for public use. Authorities must disregard any temporary circumstances, including any buildings or other structures preventing or diminishing the use of the way. Neither the Secretary of State nor a council shall confirm an Extinguishment 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 the path 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. Account has to be taken of the provisions within the Act as to compensation.

Options Considered

18. To:
- (i) Submit the Orders to the Secretary of State for determination with the recommendation the Orders be confirmed.
 - (ii) Abandon the Orders

Reason for Proposal

19. Officers believe it is expedient to extinguish the path through Manor View and its garden as in the light of a satisfactory alternative there is no need for the public to use this route. It is necessary to confirm the concurrent Creation Order providing for a footpath in substitution for the section of footpath to be extinguished to ensure public access along West Ashton Footpath 1 is maintained.

Proposal

20. That the Orders made under Sections 26 and 118 of the Highways Act 1980 be forwarded to the Secretary of State for determination, with the recommendation the objection is dealt with by written representations and the Orders are confirmed.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A – Plan of proposed footpath change

Appendix B – Report to Western Area Planning Committee 5 November 2014