

WILTSHIRE COUNTY COUNCIL

AGENDA ITEM NO.

REGULATORY COMMITTEE
14th JULY 2004

**BAYDON: PROPOSED EXTINGUISHMENT OF
FOOTPATH 3**

Purpose of Report

1. To seek approval for the making of an Order under Section 118 of the Highways Act 1980 to extinguish a short section of Baydon footpath 3, as shown on the plan attached at **Appendix 1**.

Background

2. Solicitors on behalf of the owners of Spindles in Finches Lane, Baydon, wrote to the County Council after a land search had indicated a footpath through the grounds of Spindles. The letter stated:-

"We gather both the Parish Council and all the elderly residents in the village have never been aware of any footpath... The footpath has been totally obstructed by substantial beech hedges which are at least 50 years old."

3. The footpath passes through the grounds of the property known as Spindles, a bungalow probably constructed in the 1930s. The bungalow was built on land which formed part of the Vicarage garden.
4. There are no physical signs of the existence of the footpath on the definitive line, or indeed an unrecorded used route in the vicinity.
5. The footpath exits immediately on to Ermin Street through a high mature hedge. There is no verge. This is a straight Roman road which consequently carries fast moving traffic. The exit on to the road is potentially dangerous for walkers.
6. No complaints have been made that the definitive route has not been available for use for several decades.

Consultations

7. **Baydon Parish Council** states as follows:-

"The existence of this footpath has come as something of a surprise to the Parish Council as, although it is clearly marked on the Definitive Map, it is not a footpath which any of the Councillors can recall ever being used."

8. The Parish Council agrees to the path being extinguished or diverted along Finches Lane but considers that relocating the footpath to the eastern side of the eastern boundary of Spindles would pose a safety risk at the point of entry on to Ermin Street.

9. **Mr. B. Riley** states:-

"I do not have any strong feelings about the relevant section of path. It is really up to local residents to make representations."

10. No further comments have been made on the application.
11. No statutory undertakers' equipment is affected by the proposal.

Main Considerations for the Council

12. Section 118 of the Highways Act 1980 provides for the extinguishment of footpaths and bridleways:-

Where it appears to a Council as respects a footpath or bridleway in their area (other than one that 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.'

Sub-section (2) states:-

(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 so to do 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...

13. The existing policies with regard to extinguishment orders are:-

The County Council will, in view of the limited resources available, no longer consider applications for diversion/extinguishment of rights of way unless there are exceptional circumstances for which prior Committee approval is required.

Where justified, the County Council will pursue diversion/extinguishment of public rights of way through the most appropriate means possible with a view to recovering from the applicant the reasonable costs incurred by the County Council.

14. The path is not necessary for public use as its unavailability, probably since the compilation of the Definitive Map, has not been reported to the County Council. If the path could be made available for public use, officers feel that it would not be used owing to its dangerous junction with Ermin Street, and Finches Lane provides an attractive safer route.

Environmental Impact of the Recommendation

15. None.

Risk Assessment

16. The line of the path exits directly on to Ermin Street and is therefore dangerous.

Financial Implications

17. The landowners have confirmed that they will pay the County Council's costs in connection with the making of the Order.

Options Considered

18. Members could resolve not to make the Order.

Reasons for Recommendation

19. To reduce a safety risk.

Recommendation

20. That approval be given to the making of an Order under Section 118 of the Highways Act 1980 providing for the extinguishment of that part of Baydon footpath 3, as shown on the plan at **Appendix 1**.

GEORGE BATTEN

Director of Environmental Services

Report Author

BARBARA BURKE

Senior Rights of Way Officer

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

Correspondence with District and Parish Councils and other interested parties