

**WESTBURY: PROPOSED EXTINGUISHMENT OF
FOOTPATHS 17, 22, 24 AND 26**

Purpose of Report

1. To:-
 - (i) Report on an objection received by the County Council in respect of a Public Path Extinguishment Order made under Section 118 of the Highways Act 1980 to extinguish sections of Footpaths 17, 22, 24 and 26 Westbury, as shown on the plans attached at **Appendices 1 and 2**, conditional on Persimmon Homes completing an agreement with the County Council providing for the alternative paths to be adopted as highway.
 - (ii) Seek approval to refer the Order to the Secretary of State for decision, with the recommendation that the Order be confirmed.

Background

2. Persimmon Homes are in the process of completing a large development at Westbury Leigh. Unfortunately much of the development has been completed before securing the necessary diversions for sections of Footpaths 17, 22, 24 and 26 Westbury. As the planning consent for the development affecting these paths has been granted, the District Council cannot make Orders under Section 257 of the Town and Country Planning Act 1990. The agreement under Section 106 of the 1990 Act regarding the development contains a specific provision dealing with the stopping-up of any highway and the associated costs payable by the developer to the County Council.
3. Planning consultants, on behalf of Persimmon Homes, asked the County Council to make an Order to alter the legal routes of the paths in question to reflect the alternative routes which had already been provided and are now being used by the public.
4. No objections were made to the proposed changes at the consultation stage.

Objections received to the making of the Order

5. **Mr. F. Morland, Dead Maids Close, Chapmanslade**, objected to the making of the Order. In a letter dated 13th December 2004 he stated:

"In summary, my representations are that the requirements of Section 118 of the Highways Act 1980 (including the procedural requirements) have not been met, the ways in question are still required for public use, the extinguishment of these ways is contrary to the Development Plan as it applies to the Penleigh, Westbury Leigh housing development, and to the public interest in maintaining public rights of way in and around Westbury, and that the case for the extinguishment of these ways has not been made out and that the expediency of doing so has not been established."

The Order is also contrary to the undertaking of long standing by the developers that the proposals would not require the closure of any existing rights of way within the development area."

Main Considerations for the Council

6. Section 118 of the Highways Act 1980 provides for the extinguishment of footpaths and bridleways as set out below:-

"1. Where it appears to a council as respects a footpath or bridleway in their area (other than one which is a trunk road or 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 a public path extinguishment 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 contained in section 28 above as applied by section 121(2) below."

7. The County Council's policy with regard to public path orders is set out in DM3 of the "Framework for Managing the Rights of Way Network in Wiltshire 2004-2009, Appendix 1, as follows:-

"Applications for public path orders under the Highways Act 1980 will be considered on their merits according to the legal criteria. Provided there is no substantial disadvantage to users of the right of way, and that there is a clear advantage to the applicant, the County Council will take a positive approach to the proposed alteration."

The Policy also states that:

"The County Council will, in all cases where the application for a public path order has not been instigated by the Council itself and where the applicant will benefit from the confirmation of the Order, require the applicant to meet all of the Council's reasonable and actual costs of processing the application to its conclusion, whether or not the Order is ultimately confirmed. The County Council will also require the applicant to meet the full cost of any work required to bring the new route (where applicable) into being and also of any work involved in closing the original route."

8. As the development and new road and path layout are substantially completed, the Council had to consider the impact this has had on existing rights of way.
9. Path 17 is obstructed by a fence and passes through a garden. Therefore, it is not usable. The alternative is a tarmac 2.5 metre wide path, a much more suitable path in a now urban environment for people of all ages to use.

10. Path 22 is usable but not as pleasant as the provided alternative.
11. Part of Path 24 is obstructed by a garage, fences and crash barriers. The remainder is usable but passes through a landscaped area. The alternative routes are at least as convenient and the surface now more appropriate.
12. Path 26 is obstructed by a crash barrier erected at the instigation of the County Council. The alternative is more convenient for people of all ages and abilities to use.
13. The effect of the proposed changes is illustrated on the plans at **Appendices 1 and 2**. **Appendix 1** shows the changes to Footpaths 17, 22 and 24 as follows:-

FOOTPATH NO.	EXISTING ROUTE	NEW ROUTE
17	A-B	A-C-B
22	E-F-H	E-D-F-G-H
24	A-E-J-K	A-D-E-J-L-M-K

Appendix 2 shows the change to Footpath 26 as follows:-

FOOTPATH NO.	EXISTING ROUTE	NEW ROUTE
26	A-B	A-C-B

14. It is expedient to regularise the position of these rights of way to provide certainty for members of the public and especially the owners of the two homes directly affected by two of the paths, whose properties could potentially be blighted. It would not be reasonable to allow the situation to stay as at present.
15. With the dedication of new routes with all-weather surfaces suitable for the young and old, people with disabilities, and parents with prams and pushchairs, the legally existing routes are not needed for public use. The area is no longer farmland but urban fringe and the rights of way network through the estate should reflect the need for better surfaced paths allowing safe crossings of spine roads.
16. Mr. Morland was requested to amplify his objection but no reply was received. Officers do not know what procedural requirement Mr. Morland believes has not been met, or how it is contrary to the Development Plan.
17. Officers do not agree with Mr. Morland that the paths in question are still required for public use, as more suitable paths have been provided. No objections have been made to the unavailability of the 'definitive' routes.

Environmental Impact of the Recommendation

18. None.

Risk Assessment

19. The alternative paths provided are more suitable for the urban nature of the area and are safer for the public to use.

Financial Implications

20. Persimmon Homes have confirmed they will pay the County Council's reasonable costs in connection with carrying out the work and the making of the Order.

Options Considered

21. Members could decide that the Council does not wish to pursue the extinguishment of the sections of the path and the formalising of the alternative paths provided. If the 'definitive' lines of the paths were to be enforced, this would necessitate the demolition of structures over the rights of way or removal of all obstructions and safety barriers. Officers do not believe these actions to be appropriate solutions to the situation.

Reasons for Recommendation

22. The public are using the newly provided paths as these are an improved amenity. It is in the interests of the public and various landowners to regularise the position.

Recommendation

23. That approval be given to refer the Public Path Extinguishment Order relating to Footpaths 17, 22, 24 and 26 Westbury to the Secretary of State for decision, with a recommendation that the Order be confirmed on the grounds that the sections of the footpaths to be extinguished by the Order are not needed for public use.

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 the District and Town Councils and other interested parties