

REGULATORY COMMITTEE

23<sup>rd</sup> JULY 2003

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**CRICKLADE: PROPOSED EXTINGUISHMENT OF  
PARTS OF PUBLIC FOOTPATH 40**

**Purpose of Report**

1. To seek approval to the making of an Order under Section 118 of the Highways Act 1980 to extinguish parts of public footpath 40 Cricklade.

**Background**

2. It has come to light that there are two residual sections of public footpath 40 Cricklade which have inadvertently never been legally extinguished, as shown by solid black lines A-B-C and D-E on the attached plan (**Appendix 1**).
3. The section between points A and B on the plan is over the Ladymead/White Horse Road, Culverhay Estate, which was constructed by the former Cricklade and Wootton Bassett Rural District Council as the predecessor Housing Authority to North Wiltshire District Council. The extinguishment of this section was overlooked at the time of the construction of the estate in the late 1980s and therefore it still appears in the Definitive Map and Statement.
4. The section of footpath between points B and C is over the Wilton Homes Ltd. Estate (Westmill Lane, Phase 3) which was constructed in the late 1970s/early 1980s. The Authority did make an Order on 7<sup>th</sup> March 1978 which it believed at the time provided for the diversion of this section. However, it now transpires that this Order failed to extinguish the line of the legal route and, furthermore, provided for a new section of footpath in the position shown between points D and E.

**Main Considerations for the Council**

5. The extinguishment is proposed under Section 118 of the Highways Act 1980. Sub-section (1) sets out the requirement for making such an order:-

*"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 then 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'."*

6. Sub-section (2) sets out the requirements to confirm such an order:-

*"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 ..."*

7. Proposed extinguishments of rights of way are covered by the Authority's Policy No. 14:-

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

### **Environmental Impact of the Proposal**

8. There will be no environmental impact as a result of this proposal.

### **Risk Assessment**

9. There is no risk attached to the extinguishment of these sections of this public right of way.

### **Financial Implications**

10. The Authority will be required to cover the cost of the Order making process which is estimated to be in the region of £700.

### **Options Considered**

11. Enforce the making available of the legal lines of the ways.
12. Allow the current situation to continue.
13. Make an Order.

### **Reasons for Recommendation**

14. It is considered appropriate to make an Extinguishment Order at this time for the following reasons:-
- (i) The legal lines to be extinguished cross and therefore blight some 15 houses;
  - (ii) There is a satisfactory existing alternative connection between points A and C on the plan over public footpath 82 on the Definitive Map, and estate footways and footpaths which have been adopted as public highway;

- (iii) The lines to be extinguished do not exist on the ground and in view of (ii) above are considered to be not needed for public use (as set out in paragraph 5);
- (iv) It is also considered, in view of both (ii) and (iii) above, that there is no likelihood of a requirement for use by the public of the lines to be extinguished (as set out in paragraph 6);
- (v) It is considered that there are "exceptional circumstances" as required in paragraph 7, for the reasons given above, in particular 14 (i).
- (vi) A full public consultation exercise has been carried out, which included consulting Parish and District Councils, public utilities and User Groups, both statutory and non-statutory, and no objections have been received.

### **Recommendation**

15. That an Order be made under Section 118 of the Highways Act 1980, extinguishing parts of public footpath 40 Cricklade, on the routes shown by solid black lines A-B-C and D-E on the plan attached at **Appendix 1**.

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

None