

REGULATORY COMMITTEE
17th DECEMBER 2003

PEWSEY: PROPOSED EXTINGUISHMENT OF FOOTPATH 65

Purpose of Report

1. To seek approval to the making of an Order under Section 118 of the Highways Act 1980 to extinguish footpath 65 Pewsey, as shown on the plan attached at **Appendix 1**.

Background

2. The owners of 18 The Crescent, Pewsey, applied for permission to erect a garage on their property. The application was refused and one of the reasons given was the existence of a public footpath through the grounds of the property.
3. The owners of 20 The Crescent wrote to the Council stating that they had lived in their property since 1966 and were surprised to discover a footpath ran through the grounds as they had seen no indication of this.
4. At the preparation stage of the Definitive Map, Ordnance Survey Maps at a scale of six inches to one mile were sent to Parish and Town Councils requesting the indication of public paths. The Ordnance Survey Map covering the area in which footpath 65 Pewsey lies was surveyed in 1884, revised in 1922-23 and published in 1926. The Crescent, a former local authority housing estate, was not shown on this map. Numbers 18 and 20 The Crescent were built during the 1930s prior to the time of the preparation of the Definitive Map in 1952.

Consultations

5. Consultations with the District and Parish Councils and user groups were undertaken on the extinguishment of the path. No objections were made and the District Council consented to the making of the Order.

Main Considerations for the Council

6. 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 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."

Sub Section (2) states:-

"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. The extinguishment policy in relation to Diversion/Extinguishment Orders is:-

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.

8. The path has not existed on the ground since the affected properties were built, before the Definitive Map for the area was compiled in 1952. The Council has received no comments regarding its unavailability and a link from The Crescent to Stratton Road is available very close by. Clearly the path is not needed for public use and may have erroneously been included on the Definitive Map.
9. The existence of the path has now caused a problem for one of the three householders affected by it and it is inequitable not to address this.

Environmental Impact of the Proposal

10. None.

Risk Assessment

11. None.

Financial Implications

12. There is budgetary provision for addressing problems of this nature.

Options Considered

13. Members could resolve not to make the Order.

Reasons for Recommendation

14. The Definitive Map was prepared in 1952. The properties through which the path lies were built in the 1930s. As the properties were not shown on the map used by the Parish Council to claim the path, it is highly probable that an error was made in preparing the Definitive Map. It is inequitable not to deal with the issue since the existence of the path adversely affects three households.

Recommendation

15. That approval be given to the making of an Order under Section 118 of the Highways Act 1980 providing for the extinguishment of footpath 65 Pewsey, as shown on the plan at **Appendix 1**.

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

Correspondence with the District and Parish Councils and other interested bodies.
Parish claim papers from 1950.