

REGULATORY COMMITTEE
17th DECEMBER 2003

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

Purpose of Report

1. To seek approval to the making of an Order 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 with the County Council Dedication Agreements to provide new paths as alternatives.

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 Westbury footpaths 17, 22, 24 and 26. As the houses affecting these particular paths are complete, 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, have asked the County Council to make an Order to alter the legal routes of the paths in question to reflect the alternative routes which have already been provided by the developers and are now being used by the public.

Consultations

4. **The Ramblers' Association** - no objection to the proposals.
5. **Westbury Town Council** - no objections to "the minor alterations proposed to footpaths 17, 22, 24 and 26."
6. No other comments have been received.

Main Considerations for the Council

7. 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."*
8. The Council has two policies which specifically address diversion and extinguishment orders:-
 - (i) 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.
 - (ii) 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.
9. As the development and new road and path layout are substantially completed, the Council has to consider the impact this has had on existing rights of way.
10. 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.
11. Path 22 is usable but not as pleasant as the provided alternative.
12. 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.

13. 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.
14. The effect of the proposed changes is illustrated on the plans attached 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

15. 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.
16. 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.

Environmental Impact of the Proposal

17. None.

Risk Assessment

18. Improved safer paths for the public to use.

Financial Implications

19. Persimmon Homes have confirmed they will pay the Council's reasonable costs in executing the work and the cost of making the Order.

Options Considered

20. Demolition of structures over the rights of way or removal of all obstructions and safety barriers are not considered to be proportionate solutions to the situation.

Reasons for Recommendation

21. The public are using the newly provided paths as they are a better amenity. It is in the interests of the public and the landowner to regularise the position.

Recommendation

22. That approval be given to the making of an Order under Section 118 of the Highways Act 1980 to extinguish sections of footpaths 17, 22, 24 and 26 Westbury, as shown on the plans at **Appendices 1 and 2**, conditional on Persimmon Homes completing the County Council Dedication Agreements to provide new paths as alternatives.

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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