

To: Legal and Democratic Services Manager, South Cambridgeshire
District Council
From: Steven Thoday, Definitive Map Officer CC1305
Ref: 14/ST
Date: 6th September 2012

Report on the proposed extinguishment of part of the Public Footpath at May's Avenue, Balsham

1 Purpose

- 1.1 To report on the proposed extinguishment of part of the Public Footpath at May's Avenue, Balsham.
- 1.2 Appendix A comprises a copy of the extinguishment application. A map showing the effect of the proposals is at Appendix B.

2 Background

- 2.1 This extinguishment order is required to implement a planning permission in relation to planning application number S/1699/11 (see Document C) which was submitted to South Cambridgeshire District Council on 6th August 2011. The application is for the erection of 11 affordable dwellings and associated landscaping and car parking following the demolition of nos.22-46 May's Avenue, Balsham. The Public Footpath that runs in front of nos.22-46 May's Avenue and connects to May's Avenue will be obstructed by the proposed new dwellings, gardens and car parking areas. It would be necessary, therefore, to extinguish this part of the Public Footpath to enable construction to take place without obstruction of the highway.
- 2.2 The footpath is not recorded on the Definitive Map and Statement but is recorded on the List of Streets, having been recorded as being maintainable at public expense as a public footpath. The paths in question were adopted as public footpaths because they did not meet the definition of a footway, which has to be alongside a carriageway.
- 2.3 The extinguishment of the footpath therefore falls to be determined by the relevant planning authority under section 257 of the Town and Country Planning Act 1990.
- 2.4 In February 2007, South Cambridgeshire District Council entered into an Agreement with Cambridgeshire County Council providing that all Public Path Order applications under section 257 of the Town and Country Planning Act 1990 should be processed by the County Council, acting as agents for the District Council. A copy of the Agreement explaining the procedure is attached at Document D.

- 2.5 The application documents were therefore forwarded to Steven Thoday, Definitive Map Officer at the County Council, who began the formal consultation procedure on 22nd June 2012.

3 Site Description

- 3.1 Photographs of the footpaths can be seen at Appendix E.
- 3.2 The public footpath starts at the adopted estate path adjacent to No.22, May's Avenue and proceeds west-north-westerly for 36.7m to No.32a and 34 May's Avenue then proceeds in a southerly direction for 26.4m to No.44 May's Avenue where the path splits one part continuing in a southerly direction for 11.4m to the footway along May's Avenue and the other part proceeding east from No.44 May's Avenue for 19m to the footway at May's Avenue. Path metalled throughout with a width 1.1m.

4 Legal Framework

- 4.1 Section 257 of the Town and Country Planning Act 1990 allows that:
- (1) Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath or bridleway if they are satisfied that it is necessary to do so in order to enable development to be carried out—
- (a) in accordance with planning permission granted under Part III, or
- (b) by a government department.
- (2) An order under this section may, if the competent authority are satisfied that it should do so, provide—
- (a) for the creation of an alternative highway for use as a replacement for the one authorised by the order to be stopped up or diverted, or for the improvement of an existing highway for such use;
- (b) for authorising or requiring works to be carried out in relation to any footpath or bridleway for whose stopping up or diversion, creation or improvement provision is made by the order;
- (c) for the preservation of any rights of statutory undertakers in respect of any apparatus of theirs which immediately before the date of the order is under, in, on, over, along or across any such footpath or bridleway;

(d) for requiring any person named in the order to pay, or make contributions in respect of, the cost of carrying out any such works.'

4.2 An Order shall come into effect once the new route has been certified by either the order-making authority or the highway authority as being of a satisfactory standard for public use. The County Council as highway authority will undertake the certification.

4.3 The Equality Act 2010 consolidated previous disability legislation. There is currently little formal guidance on how the Act interacts with existing rights of way legislation. However, it is generally understood to require order-making authorities to take into account the reasonable needs of disabled people (using the term in its broadest sense) in considering changes to the rights of way network. The Act requires authorities to be more proactive in recording their thought-processes in making their decisions. A recent Planning Inspectorate decision said that the Act only applies to the alternative route in a diversion.

5 Cambridgeshire County Council Policy (including maintenance)

5.1 The County Council's own policy (approved by Cabinet in 2003 and revised on 25 May 2010) requires that certain criteria are met if a public path order is to be made. The policy is set out with public path orders under the Highways Act 1980 in mind, but it is sensible to consider the criteria in relation to any proposal under the Town & Country Planning Act 1990, because any new path will be vested in Cambridgeshire County Council as the highway authority and as such responsible for managing them. The highway authority is also responsible for protecting and asserting the public's existing rights, and not allowing them to be removed unless the legal tests are met. The Policy criteria are as follows:

- i. Pre-application consultations have been carried out with the prescribed bodies.
- ii. The existing route is available for use and any 'temporary' obstructions have been removed, in order to allow a comparison to be made. Any request for exemption will be decided by the Director Highways & Access as to whether or not that is appropriate.
- iii. A suitable alternative path is provided for every path that is to be diverted.
- iv. The proposed new route is substantially as convenient to the public as the original
- v. The proposed new route is not less convenient for maintenance than the original
- vi. No objections are received to the proposals during the statutory consultation period prior to making an order. However, the County

- Council will review this criterion in individual cases in light of objections and potential public benefit of the proposal.
- vii. The maintenance burden on the County Council is no greater than that of the original. If the maintenance burden is greater, the landowner may be required to enter into a maintenance agreement with the County Council.
 - viii. A minimum width of 2m is provided for a diverted footpath, and a minimum width of 4m for a diverted bridleway. In exceptional cases, e.g. cross-field paths, it may, taking into account all the available facts, require such a width as it considers reasonable and appropriate.
 - ix. That all the works required to bring the new route into operation are carried out at the expense of the landowner and to the County Council's specifications unless otherwise agreed.
- 5.2 Where there is a desire line on the ground that is not on the definitive route because that is obstructed we will consider that to be evidence of a desire to get from points A-B, and will require the definitive route to be opened up or diverted onto the desire line or another mutually agreed route.

6 Consultations

- 6.1 The local Ramblers' Association, the British Horse Society, South Cambridgeshire District Council, Balsham Parish Council, Local County and District Members, the prescribed user groups and the utility companies were all consulted about the proposals. The following replies have been received (copies are attached as Appendix F):
- 6.2 The Ramblers' Association South Cambridgeshire Group stated that as the paths were not on the Definitive Map they were not directly the concern of the Ramblers' Association. However the Ramblers' stated that the closure of the path may cause some inconvenience to the residents of the houses they connect (these houses are empty and to be demolished) as these short cuts may no longer be available. The Ramblers' stated that in mitigation of this routes through and around the northern side of the estate are potentially available, provided that the gates shown on the plan are not locked. (These gates are to be locked but residents will have keys).
- 6.3 Virgin Media and Viatel Plant is not affected, National Grid's apparatus is not affected, Cable and Wireless Worldwide and BT Openreach have no objections. Anglia Water has no objections to the proposal as long as it rights of access for maintenance and repair remain.
- 6.4 County Councillor John Batchelor supports the proposed extinguishment.
- 6.5 Balsham Parish Council responded to the pre-application consultation to state that they had no objection to the extinguishment of the public footpath but was concerned by the length of time the order is going to

take and the delays it will cause. In response to this if this report is considered by the September South Cambridgeshire District Council Planning Committee and it is resolved that the order should be made, the order will be made and making of the order published in November. There is a four week period for objections, if no objections are received the order can be confirmed and notice of the order published in December. If objections to the order are received we would normally allow 3 months for negotiations with objectors, if then objections are still not withdrawn the order would need to be sent to the Secretary of State for determination.

6.6 The Highways Supervisor for Balsham has no objection to the proposed extinguishment.

6.7 The Director of Information Management & Operations of Cambridgeshire County Council made the following comments:

Having considered your report, I am content that an Order should be made by South Cambridgeshire District Council under Section 257 of the Town and Country Planning Act 1990 to extinguish the unrecorded public footpaths on May's Avenue, Balsham, as described in the report, to enable the proposed development in Planning Application S/1699/11 to take place.

I note that this will remove any maintenance liability for these paths that Cambridgeshire County Council as Highway Authority may have had, and that as the new estate road/paths will not be adopted as public highway there will be no new maintenance burden for County Council as a result of the development.

I note that no alternative route is being offered and that the path to the rear of the site is to be gated by the applicant. However I am content that the applicant is aware of the potential problem this may precipitate and has addressed it by consulting with local residents and user groups during the planning process and pre-s257 application process.

6.8 No other responses were received.

7 Grounds for [stopping up and provision of alternative route]: Town & Country Planning Act 1990 and Equality Act 2010

7.1 The extinguishment of the public footpath is required in order to implement a planning permission granted under part III of the Town and Country Planning Act 1990. Section 1 (a) is therefore satisfied.

7.2 No alternative highway is being provided by the order. The footpaths to be extinguished primarily provide access for residents of nos. 22 – 46 May's Avenue, these properties are to be demolished. The new estate road will not be adopted as public highway but will be constructed to

adoptable standards. The footpath that runs along Mays Avenue which will be crossed to form the new access will be made good to adoptable standards and the extension of which in front of plot 9 & 10 will also be constructed to adoptable standards. The parking court will remain private.

- 7.3 There is a potential for challenge from local users regarding the gating of the path to the rear of the site. However local residents have been consulted by the applicant during the Planning Application process and no-one has raised any concerns. Residents of the new properties and properties accessed by this path will be given keys to the gate. It is considered not a significant enough link for us as Highway Authority to require an alternative route, however South Cambridgeshire District Council and the applicant should be aware that this represents a potential risk.

8 Grounds for diversion: Cambridgeshire County Council criteria including Maintenance Liability

- 8.1 As stated above no alternative highway is being provided by the order. The new estate road will not be adopted as public highway but will be constructed to adoptable standards. The footpath that runs along Mays Avenue which will be crossed to form the new access will be made good to adoptable standards and the extension of which in front of plot 9 & 10 will also be constructed to adoptable standards. The parking court will remain private.

9 Conclusions

- 9.1 It is considered that the application to extinguish the public footpath adjacent to nos. 22-46 May's Avenue, Balsham meets the requirements of s.257 of the Town and Country Planning Act. No objections have been received in response to the consultation.

10 Recommendations

- 10.1 That South Cambridgeshire District Council should make a Public Path Extinguishment Order to extinguish part of the Public Footpath at May's Avenue, Balsham, as shown on the map at Document B.

LIST OF DOCUMENTS

A	Copy of the application to extinguish part of the public footpath
B	Map showing proposed extinguishment.
C	Copy of planning application No. S/1699/11
D	Copy of Memorandum of Agreement between the District Council and Cambridgeshire County Council
E	Site photographs taken on 26/06/12
F	Copies of consultation responses
G	Memo from the County Council Service Director, Infrastructure Management and Operations.