

Highways Committee

10 July 2009



Footpath at Trimdon Village between 13 Chisholm Rd and 15 Windsor Square Proposed Extinguishment Order

Report of Ian Thomson, Corporate Director, Regeneration and Economic Development

1.0 Purpose of the Report

- 1.1 To consider an application to extinguish the footpath between 13 Chisholm Road and 15 Windsor Square, Trimdon Village.

2.0 Background

- 2.1 An application has been made by Trimdon Parish Council to close this footpath. The footpath is accepted to be a public right of way, although it is neither recorded on the Council's List of Streets (publicly maintainable highways) nor the Definitive Map of Public Rights of Way. The 27 metre long footpath was constructed as part of the housing estate, is tarmaced and has a chicane where it enters Chisholm Road.
- 2.2 The footpath is located in a residential part of Trimdon Village. It connects a cul de sac road, serving the houses at the eastern side of Windsor Square and the rear of the bungalows on Hallgarth Rd, to Chisholm Rd. Windsor Square lies between Chisholm Road (to the north) and Newlands Road (to the south) and is centred on a series of adopted tarmac footpaths (not affected by this application) crossing an open grassy area with 'open plan' gardens. The footpaths link Windsor Square with Chisholm Road, Newlands Road and Meadow Road (to the west).
- 2.3 Plans at **Document A** show the location of the proposal and the surrounding network of publicly maintainable highways.

- 2.4 The extinguishment is sought by the Parish Council and a number of reasons are given – little usage of the footpath with the adjoining houses having front and rear accesses, the poor state of the path particularly in winter and the wellbeing of residents due to law and order issues. The application was supported by 3 letters from nearby residents. The Parish Council’s reasons are described in **Document B**. The land over which the path passes is owned by Sedgefield Borough Homes who are in support of the closure due to ongoing issues with anti-social behaviour in the locality.
- 2.5 Consultations have been carried out with County Councillors Lucy Hovvels and Peter Brookes, Trimdon Village Hall Community Association, Trimdon Community College Association, path user groups and 212 households in the vicinity. The County Councillors support the proposal. 11 households have written in support of the closure, while 6 households which included a petition signed by 62 people (including 9 people from the 6 households mentioned) are against the closure. Written submissions are shown in **Document C** which also includes a map showing the location of those who have made a submission.

3.0 Legal Framework

- 3.1 The relevant statutory provision for the extinguishment of a public path is Section 118 of the Highways Act 1980 and a briefing note describing this is found at **Document D**.
- 3.2 An Extinguishment Order can only be made where it appears to the Committee that it is expedient to do so because the path is not needed for public use.
- 3.3 Before an Order is confirmed, the Council or the Secretary of State must be satisfied it is expedient to do so having regard to the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public and the effect the extinguishment would have as respects land served by the path, account being taken of the provisions as to compensation. On this last point consultations with the public utilities indicate that none have any apparatus affected by the extinguishment and the landowners are in agreement with the proposed closure.
- 3.4 The confirming authority should also have regard to any material provisions of the Rights of Way Improvement Plan (ROWIP). The County Durham ROWIP does not make any specific reference to extinguishment orders.
- 3.5 The Council does have a duty to have due regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna and geological and physiographical features. However, these factors are not relevant in this case.

4.0 Objections

4.1 The objectors raise the following issues:

a the path is popular and well used and over a long period of time

Response

It is accepted that the footpath is well used and would have been constructed when the housing estate was built.

b the path is a short cut – a quick and efficient route

Response

The path provides a link between Chisholm Road and the cul de sac road to the rear of part of Windsor Square and Hallgarth Road. In addition all these houses have an adopted footpath or pavement on the other side of their properties. The residents have a choice about which side of their house they enter or exit and can as easily reach the same destinations by using these other adopted footpaths and pavements. For people walking from further afield the footpath is not the only option wherever the destination. There is the footpath through the centre of Windsor Square or pavements along Newlands Rd, Meadow Rd, Hallgarth Rd and Chisholm Rd and an adopted footpath across the recreation ground to link with the infants school, shops and library. These are all routes segregated from vehicular traffic. The footpath in question does not appear to offer any particular benefit over other routes. Indeed using it means walking along a back lane used by vehicles with a narrow pavement on which cars tend to park.

c Closing the path would create difficulties and hardship for people with health problems/disabled

Response

It is difficult to be clear exactly how closing the path will be detrimental to people with disabilities or health problems when access on foot is available to the residents of the cul de sac from the other side of their houses. There are many other routes available to pedestrians locally.

d there is not an anti-social behaviour (ASB) issue

Response

ASB of itself is not a relevant consideration within the legislation which has been described above at paragraph 3. However, it can have some bearing in the overall consideration of the expediency of the proposal. In any event a couple of nearby households do not accept that there is an ASB issue associated with the footpath. This view is in conflict with the views of the 11 households who have written in support of the closure and cited reasons associated to ASB.

5.0 Recommendations and Reasons

- 5.1 The Committee must initially consider whether it appears expedient to extinguish the footpath on the ground that it is not needed for public use.
- 5.2 It is accepted that the footpath is well used but there are other alternative pedestrian routes and there is no particular significant reason for the public to use the path given the existence of the surrounding network of traffic free footpaths and pavements. It is not needed in so far as there are other convenient routes that people can use to make their journeys on foot.
- 5.3 If the Committee is satisfied on this ground, it must then also be satisfied that it is expedient to close the path having regard to the extent to which it appears, that the path or way would, apart from the order, be likely to be used by the public. It must also consider the effect the extinguishment would have on land served by the path.
- 5.4 The path does not appear to be any more likely to be used than the alternative paths already described and indeed these other paths are more convenient to use for the public at large. The path in question does not form an identifiable shortcut to any specific destination and when used in conjunction with the back lane has to be shared with vehicular traffic.
- 5.5 The two adjoining householders and the owner of the land, Sedgefield Borough Homes, are in support of its closure. There are objections from other householders in the cul de sac. However, these properties all have alternative easily accessible entrances/exits on the other side of their houses.
- 5.6 In reaching a decision the Committee must balance the issues described above and decide whether the benefits to the community of the path remaining open outweigh the reasons provided for closing the path taking into account the statutory tests described at 5.3.
- 5.7 It is considered that, on balance, the path is not needed for public use. Given the alternatives available for pedestrians the path is unlikely to be used by the public at large for a purpose which cannot be provided by these other routes. Therefore, given the detrimental affect on the quality of life to the immediately affected householders it is considered expedient to close the path.
- 5.8 In view of the above comments and the legal tests to be applied, I recommend that it is expedient to make an Extinguishment Order under the provisions of Section 118 of the Highways Act 1980 to close the footpath between 13 Chisholm Rd and 15 Windsor Square.

Background Papers
File RED/ROW/7/18/12

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Appendix 1: Implications

Finance

Administrative and advertising costs to be recovered from the applicant as prescribed by regulations.

Staffing

Not Applicable

Equality and Diversity

Not Applicable

Accommodation

Not Applicable

Crime and disorder

This is not contained in any of the substantive tests under Section 118 of Highways Act 1980. The proposals will not have a detrimental effect on crime and disorder in the area.

Sustainability

Not Applicable

Human rights

Articles 6, 8 and Article 1 of the First Protocol of the European Convention on Human Rights (right to a fair trial, respect for private and family life and protection of property) may be relevant. Article 6 stipulates there should be a fair procedure for reaching any decision and this is in place.

As this application is made by the landowner and relates to an existing public right of way, it is unlikely that Article 8 and Article 1 of the First Protocol will be breached in reaching a decision.

Localities and Rurality

As detailed in the report.

Young people

Not Applicable

Consultation

As detailed in the report.

Health

Not Applicable

ATTACHED DOCUMENTS

Document A **Plans showing route at 1:10,000 and 1:2500**

Document B **Applicant letter**

Document C **Consultation responses**

Document D **Briefing Note – Legal Framework**