

AREA COMMITTEE ONE (BULWELL AND BULWELL FOREST) 18 FEBRUARY 2015

Title of paper:	REQUEST FOR AUTHORISATION TO STOP UP PART OF A FOOTPATH AT BEAUCLERK DRIVE, TOP VALLEY	
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Date of consultation with Portfolio Holder(s) (if relevant)	Not relevant	
Relevant Council Plan Strategic Priority:		
Cutting unemployment by a quarter		<input type="checkbox"/>
Cut crime and anti-social behaviour		<input checked="" type="checkbox"/>
Ensure more school leavers get a job, training or further education than any other City		<input type="checkbox"/>
Your neighbourhood as clean as the City Centre		<input checked="" type="checkbox"/>
Help keep your energy bills down		<input type="checkbox"/>
Good access to public transport		<input type="checkbox"/>
Nottingham has a good mix of housing		<input checked="" type="checkbox"/>
Nottingham is a good place to do business, invest and create jobs		<input checked="" type="checkbox"/>
Nottingham offers a wide range of leisure activities, parks and sporting events		<input type="checkbox"/>
Support early intervention activities		<input type="checkbox"/>
Deliver effective, value for money services to our citizens		<input checked="" type="checkbox"/>
Summary of issues (including benefits to customers/service users):		
<p>This report seeks approval for the making of an Order to stop up (close permanently) part of a public footpath running to the rear of premises on Beauclerk Drive and Crossdale Walk, Top Valley. The report additionally seeks approval for the confirmation of that Order if unopposed or for the referral of the Order to the Secretary of State for confirmation if opposed.</p> <p>The part of the footpath is a 'dead end' and is not used as a public right of way, and attracts anti-social behaviour. Permanently closing it would contribute to the reduction of anti-social activities, which although incidental to the legal grounds for the making and confirmation of the Order, would have a positive effect on the local community.</p>		
Recommendation(s):		
1	Authorise the Corporate Director for Development and Growth to make a Public Path Extinguishment Order under Section 118 of the Highways Act 1980 in respect of those parts of the path shown marked AB on Appendix 1 to the report	

2	Authorise the Corporate Director for Development and Growth to confirm the above Order if unopposed; and
3	Authorise the Corporate Director for Development and Growth to refer the above Order to the Secretary of State for confirmation if opposed

1 BACKGROUND

The 2009 Stopping Up Order

- 1.1 In 2009 the City Council received a request to permanently close part of a footpath (“part AC”) commencing adjacent to 27 Beauclerk Drive and running along the western boundary of Westglade Primary School to the rear of 55 Bakewell Drive. Part AC is shown on the plan at Appendix 1 to this report and historically formed part of a longer route running from Top Valley Drive to Bakewell Drive. Prior to this, in 2005, the area had been redeveloped (under planning application reference 05/00630/PFUL3). To enable the development to be carried out, a number of footpaths (including the southern end of the footpath running between point C and Bakewell Drive) were stopped up under the Town and Country Planning Act 1990. Part AC was outside the planning application boundary and therefore could not be stopped up using planning legislation. Following the completion of the development, part AC terminated at the boundary of the development and became a ‘dead end’. Since the completion of the development part AC cannot be used as a public right of way and therefore is not needed.
- 1.2 During the investigations into the use of part AC in 2009, Westglade Primary School confirmed that the northern part of the footpath (“part AB” shown on the plan at Appendix 1), was used to access the school from Beauclerk Drive. The access to the school is shown between points DE on the plan at Appendix 1. In September 2009 Area Committee authorised the making of an Order under section 118 of the Highways Act 1980 (a ‘Public Path Extinguishment Order’) which only related to part BC of the path as part AB still appeared to be in use at that time.

2014 request for Stopping Up Order

- 1.3 In 2014 the City Council received a request to stop up part AB of the footpath. Part AB is 111 metres in length, it is maintained by the City Council and has a tarmac surface, 4 street lights and a variable width of between 1.2 and 4.5 metres. For the reasons identified above part AB is a ‘dead end’ and is not used as a public right of way, and is therefore not needed.
- 1.4 Westglade Primary School has confirmed that it no longer uses footpath AB to access the school via points DE on Appendix 1 and now use the route FG. To establish whether part AB is used by the public and to what extent, during January 2015 a user survey was carried out over a two day period between 7.00am to 9.30am and 2.30pm to 4.30pm each day. Over this period, 10 adults and 16 school pupils were observed using footpath AB and that the majority of these were the same users on both days walking to and from school. Using footpath AB the distance from the eastern end of Crossdale Walk to point A on the footpath is 145 metres. Should footpath AB be stopped up, the distance using the alternative route from the same point on Crossdale Walk to point A on the footpath is 135 metres. The alternative route is shown on Appendix 1.

1.5 Should Area Committee authorise the use of the powers to stop up part AB, full consultation will be carried out as part of the Stopping Up Order process. A notice indicating that the Order has been made will be placed on site and published in a local newspaper setting out the effects of the Order, where a copy may be viewed and where to send representations. A copy of the notice and Order map will be sent to a number of statutory consultees including utility companies and relevant interest groups such as the Ramblers Association and Nottingham Local Access Forum. If objections are received to the Order within the statutory period, which are not withdrawn, the City Council has no power to confirm it. If, having considered any objections received, the City Council wishes to proceed with the Order, confirmation of an opposed Order can only be obtained via a determination of the Secretary of State. This determination may involve the holding of a public inquiry. The Order will not be effective unless or until it is confirmed.

2 REASONS FOR RECOMMENDATIONS

Because part AB terminates at the northern end of part BC which was stopped up by the 2009 Order, it is felt to be expedient that part AB should be stopped up under Section 118 of the Highways Act 1980 because part AB is not needed for public use.

3 OTHER OPTIONS CONSIDERED IN MAKING THE RECOMMENDATIONS

The Council could decide to make an application to the Magistrates Court to authorise the stopping up of part AB under Section 116 of the Highways Act 1980 on the ground that it is 'unnecessary'. This option was discounted because these powers are more appropriate for carriageways and footways (not footpaths), and section 118 is a specific power available to the City council to stop up for footpaths, bridleways and byways. Alternatively the Council could decide not to stop up part AB and leave this part of the footpath as a 'dead end'. This option was discounted because the footpath would continue to be used for anti-social activities.

4 FINANCIAL IMPLICATIONS

The cost of preparing and publishing the Stopping Up Order is approximately £4,500 and includes officer time and preparing and publishing the Order and will be funded by Bulwell Forest Ward Councillors. There may be additional costs, some of which will have to be met by the Council's relevant Services Area, namely Legal and Democratic Services and Traffic and Safety Services, if objections are made against the Order and it is necessary to refer it to the Secretary of State for confirmation.

5 RISK MANAGEMENT ISSUES

5.1 LEGAL IMPLICATIONS

5.1.2 The power to make a Stopping Up Order in respect of a footpath under Section 118 of the Highways Act 1980 is exercisable where it appears to the Council that it is expedient that that the footpath (or part thereof) should be stopped up on the ground that it is 'not needed for public use'. The legislation makes it clear that, in confirming an Order, the Council or the Secretary of State (as the case may be) must have regard to the extent (if any) to which it appears that the footpath would, apart from the Order, be likely to be used by the public and the effect which closure would have on the land served by it. In this particular case, irrespective of whether or not the Order is made and confirmed, part AB terminates at the northern end of part BC

which was stopped up under the 2009 Order detailed above, thereby rendering part AB unusable as a through route. A Stopping Up Order made under Section 118 would therefore meet this test. If there are objections received to the making of the Order which remain unresolved, the Order will have to be considered at a Public Inquiry or Hearing, and this will require more staff resources.

- 5.1.3 The approval of requests for footpath closures falls within the terms of reference of Area Committees in the Council's current Constitution. Should Area Committee be satisfied that part AB is not needed as a public right of way, authorisation for the making, confirmation or referral of the Order will also be required from the Corporate Director for Development and Growth.

5.2 CRIME AND DISORDER ACT IMPLICATIONS

Under Section 17 of the 1998 Crime and Disorder Act the Council has a duty to take account of community safety in all areas of its work. Proactive interventions to tackle fly tipping and other anti-social behaviour will help improve the local neighbourhood. Part AB of the footpath is being used for fly tipping and other anti-social activities and closing it permanently would contribute to the reduction of these issues. Although incidental to the legal grounds for the making and confirmation of the Order, this would have a positive effect on the local community.

5.3 EQUALITY AND DIVERSITY IMPLICATIONS

Part AB of the footpath is a "dead end and is therefore not used as a public right of way to access local services or amenities. Permanently closing the footpath would not therefore have any equality or diversity implications.

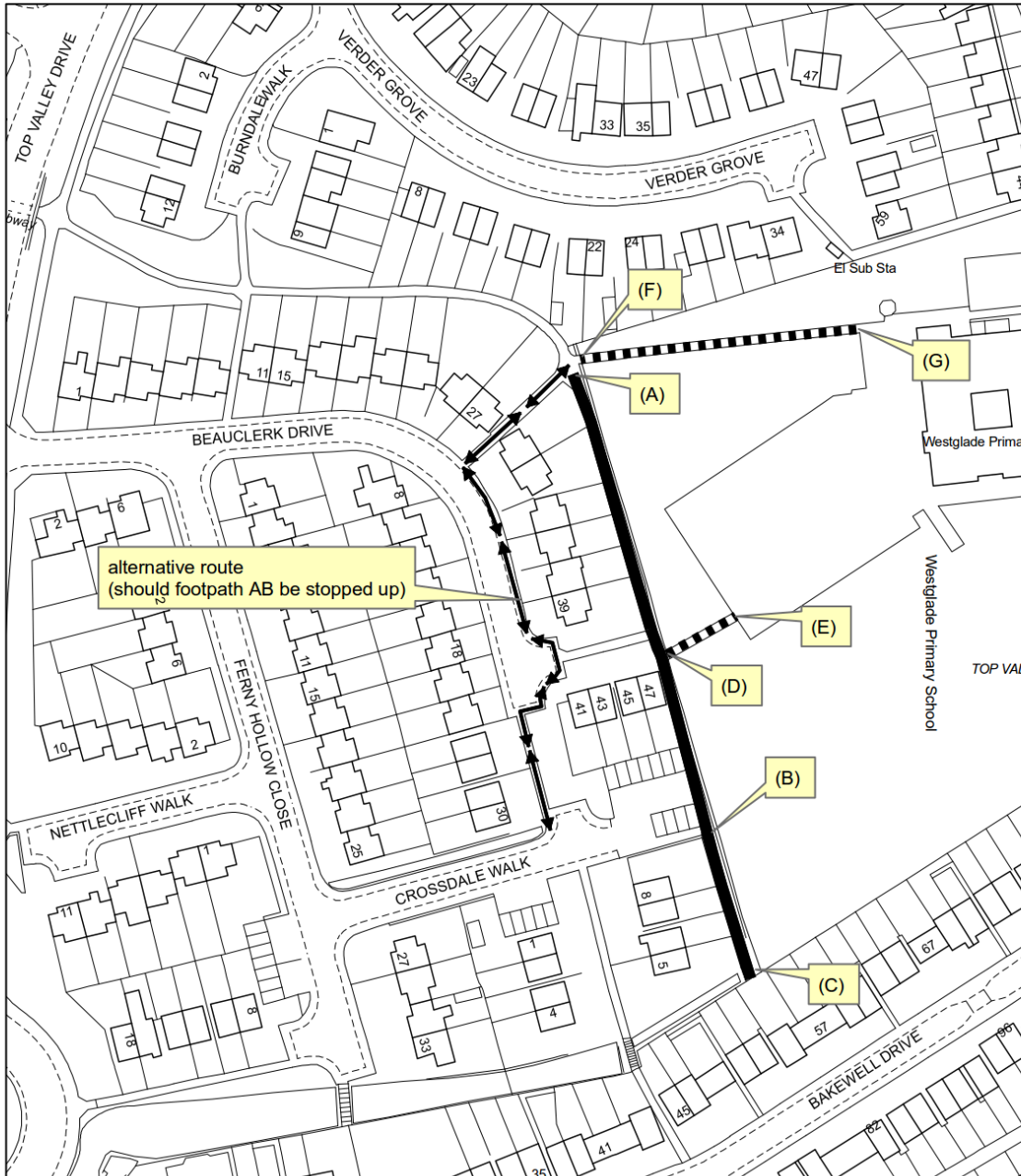
6 LIST OF BACKGROUND PAPERS OTHER THAN PUBLISHED WORKS OR THOSE DISCLOSING CONFIDENTIAL OR EXEMPT INFORMATION

None

7 PUBLISHED DOCUMENTS REFERRED TO IN COMPILING THIS REPORT






- 7.1 Highways Act 1980
7.2 Town and Country Planning Act 1990
7.3 Crime and Disorder Act 1998
7.4 Report to Area Committee One (Bulwell and Bulwell Forest) titled 'request for authorisation to stop up footpath at Crossdale Walk, Top Valley' dated 23rd September 2009 (item no. 6)
7.5 Minutes of the Area Committee One (Bulwell and Bulwell Forest) meeting dated 23rd September 2009 (minute no. 27)

APPENDIX 1



Request to Stop Up (close permanently) part of a public footpath at Crossdale Walk / Beauclerk Drive, Top Valley

Legend

-  (A) - (B) part of footpath subject of 2014 stopping up request
-  (B) - (C) part of footpath stopped up in 2009
-  (D) - (E) access to school (not used)
-  (F) - (G) access to school (used)
-  alternative route (should footpath AB be stopped up)



Development

Scale 1:1,250