

Agenda Item 116.

Development Management Ref No	No weeks on day of committee	Parish	Ward	Listed by:
N/A	N/A	Earley	Maiden Erlegh, Hawkedon, Winnersh	Scheme of Delegation

Applicant	Wokingham Borough Council	Postcode	N/A
Location	Footpath Earley 11 (part)		
Proposal	Extinguishment Order to extinguish part of Public Footpath No. 11 Earley.		
Type	Highways Act 1980		
PS Code	N/A		
Officer	Rebecca Walkley		

FOR CONSIDERATION BY	Planning Committee on Wednesday 29 March 2017
REPORT PREPARED BY	Public Rights of Way Manager

SUMMARY

A proposed Order be made under section 118 of the Highways Act 1980 to extinguish part of Public Footpath No. 11 Earley as illustrated on the enclosed plan on the grounds that it is not needed for public use.

Public Notice of the making of the Order should be given and in the event of there being no objections within the period specified, the Order be confirmed by the Council.

In the event of objections to the Order being received, Wokingham Borough Council should be responsible for the conduct of any hearing or public inquiry.

PLANNING STATUS

- N/A

RECOMMENDATION

That:

- 1) the Extinguishment Order is made and that if no objections are received that the Order is confirmed;
- 2) If objections are received and not withdrawn the Order may be referred to the Secretary of State for confirmation.

PLANNING HISTORY/BACKGROUND

- 1) In accordance with Section 118(1) of the Highways Act 1980 it is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. It is considered that Public Footpath No.11 Earley (part) as shown on the enclosed plan is not needed for public use. An alternative route is available via the adopted footway between Rushey Way, Maltby Way and Finbeck Way.
- 2) The legal process for the making of extinguishment orders requires the Council to

undertake consultation. It is possible that the consultation may attract objections. Where objections to the making of an Order are made and not withdrawn, the Order will fall to be confirmed by the Secretary of State. In considering whether to confirm an Order the Secretary will have regard to:

- a) *The extent (if any) to which it appears to him...that the path or way would, apart from the order, be likely to be used by the public, and*
- b) *The effect which the extinguishment of the right of way would have as respects land served by the path or way, and*
- c) *The material provision of any rights of way improvement plan prepared by any local highway authority which includes land over which the order would extinguish a public right of way.*

- 3) Where there are no outstanding objections, it is for the Council to determine whether to confirm the Order in accordance with the matters referred to above.
- 4) The path has not been available for use since houses were built over the public right of way in the late 1970s. Unfortunately a Diversion Order was not put in place before construction of the houses and therefore this section of Earley 11 has been obstructed by a number of properties for a considerable time.
- 5) Once an Order is made it may be the subject of objections. If objections are not withdrawn, this removes the power of the local highway authority to confirm the order itself, and may lead to a hearing/an inquiry. It follows that the Committee decision may be confirmed or not confirmed. This process may involve additional legal support and resources.
- 6) The Deregulation Act 2015 brought in changes to Con 29. The latter is a form for property buyers asking Local Authorities about Planning, Building Regulation and public rights of way among other matters. There are now compulsory questions on Con 29 specifically relating to public rights of way as a result of changes in the Deregulation Act. This process has highlighted two public rights of way in Wokingham where houses have been constructed over public rights of way without Diversion Orders being put in place. This is unfortunately an issue inherited by Wokingham Borough Council from Berkshire County Council.
- 7) Extinguishment of these routes which have not been used by the public for some years is a priority for the Authority, one of these routes is part of footpath Earley 11.
- 8) The current line runs in an approximate southerly direction from Rushey Way, over Tilney Way, Lutton Close, Maltby Way, Anston Close and Finbeck Way towards Lower Earley Way. It runs over land affected by a number of property owners. It is presumed that the land owners affected would be supportive of the Order as the path runs under their property. All the land owners affected will be consulted on the Extinguishment Order. The route is currently not usable.
- 9) The Ward Councillors have been consulted about the proposal. No objections have been received.
- 10) It is within the Council's discretion to make an Order if it appears to the Council that it is expedient that a path or way should be stopped up on the ground that it is not needed for public use. Although the path may be used by the public if it were

diverted, it is considered that the obstructed footpath is not needed for public use as there are equally convenient existing public footpaths nearby whereby walkers can walk from Rushey Way to Finbeck Way.

- 11) There are no ROWIP initiatives or objectives associated with the path. As the route has been unavailable for many years and, to our knowledge, there have been no other requests to use it. Pursuing the extinguishment is regarded as reasonable.

CONSULTATION RESPONSES

The Ramblers' Association, Open Spaces Society, Earley Town Council and the Local Access Forum have no objections to the proposed Extinguishment Order.

REPRESENTATIONS

APPLICANTS POINTS

N/A

PLANNING POLICY

N/A

PLANNING ISSUES N/A

CONCLUSION

- 1) Part of footpath Earley 11 has been obstructed by development during the time of Berkshire County Council. Wokingham Borough Council has inherited this problem which it now wants to resolve, particularly in light of the Deregulation Act 2015.
- 2) There are currently no objections to the proposal from access groups, the Parish Council and local Members.
- 3) Pursuing the Extinguishment Order seems reasonable for all those land owners affected by the presence of the right of way. The route has not been used for many years and there has been no complaints regarding obstruction of this section of footpath Earley 11.

CONTACT DETAILS

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