

# Licensing and Regulatory Committee



*St Edmundsbury*  
BOROUGH COUNCIL

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|--|---|--|--|
| <b>Title:</b>  | <b>Agenda</b>   |  |  |
| <b>Date:</b>   | <b>Tuesday 29 January 2019</b>  |  |  |
| <b>Time:</b>   | <b>5.00pm</b>   |  |  |
| <b>Venue:</b>  | <b>Conference Chamber West (F1R09)</b><br><b>West Suffolk House</b><br>Western Way<br>Bury St Edmunds, IP33 3YU   |  |  |
| <b>Full Members:</b>   | <div><div><b><i>Chairman</i></b>    Vacancy</div><div><b><i>Vice-Chairman in the chair</i></b>    Clive Springett</div><div><div><u>Conservative Members (11)</u></div><div>Sarah Broughton<br/>Mike Chester<br/>Mary Evans<br/>Susan Glossop<br/>Wayne Hailstone<br/>Beccy Hopfensperger</div><div>Margaret Marks<br/>Richard Rout<br/>Clive Springett<br/>Peter Thompson<br/>Vacancy</div></div><div><div><u>Charter Group Member (1)</u></div><div>Diane Hind</div><div></div></div><div><div><u>Haverhill Indys Group (1)</u></div><div>John Burns</div><div></div></div></div> |  |  |
| <b>Substitutes:</b>  | <div><div><u>Conservative Members (4)</u></div><div>Paula Fox<br/>Elaine McManus</div><div>Ian Houlder<br/>Patricia Warby</div></div> <div><div><u>Charter Group Member (1)</u></div><div>David Nettleton</div><div></div></div> <div><div><u>Haverhill Indys Group (1)</u></div><div>Tony Brown</div><div></div></div>   |  |  |
| <b>Interests – Declaration and Restriction on Participation:</b> | Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.   |  |  |
| <b>Quorum:</b>   | Five Members  |  |  |

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| <b>Committee administrator:</b> | <b>Christine Brain</b><br>Democratic Services Officer (Scrutiny)<br><b>Tel:</b> 01638 719729<br><b>Email:</b> <a href="mailto:christine.brain@westsuffolk.gov.uk">christine.brain@westsuffolk.gov.uk</a> |
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# Public Information



*St Edmundsbury*  
BOROUGH COUNCIL

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|---|--|---|
| <b>Venue:</b>   | <b>West Suffolk House</b><br>Western Way<br>Bury St Edmunds<br>Suffolk<br>IP33 3YU   | Tel: 01284 757120<br>Email: <a href="mailto:democratic.services@westsuffolk.gov.uk">democratic.services@westsuffolk.gov.uk</a><br>Web: <a href="http://www.stedmundsbury.gov.uk">www.stedmundsbury.gov.uk</a> |
| <b>Access to agenda and reports before the meeting:</b> | Copies of the agenda and reports are open for public inspection at the above address at least five clear days before the meeting. They are also available to view on our website.  |   |
| <b>Attendance at meetings:</b>                          | The Borough Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public.  |   |
| <b>Public participation:</b>                            | Members of the public who live or work in the Borough are invited to put one question or statement of not more than three minutes duration relating to items to be discussed in Part 1 of the agenda only. If a question is asked and answered within three minutes, the person who asked the question may ask a supplementary question that arises from the reply.<br>A person who wishes to speak must register at least 15 minutes before the time the meeting is scheduled to start.<br>There is an overall time limit of 15 minutes for public speaking, which may be extended at the Chairman's discretion.  |   |
| <b>Disabled access:</b>                                 | West Suffolk House has facilities for people with mobility impairments including a lift and wheelchair accessible WCs. However in the event of an emergency use of the lift is restricted for health and safety reasons.<br>Visitor parking is at the car park at the front of the building and there are a number of accessible spaces.   |   |
| <b>Induction loop:</b>                                  | An Induction loop is available for meetings held in the Conference Chamber.  |   |
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| <b>Personal Information</b>                             | Any personal information processed by Forest Heath District Council or St Edmundsbury Borough Council arising from a request to speak at a public meeting under the Localism Act 2011, will be protected in accordance with the Data Protection Act 2018. For more information on how we do this and your rights in regards to your personal information and how to access it, visit our website: <a href="https://www.westsuffolk.gov.uk/Council/Data_and_information/howweuseinformation.cfm">https://www.westsuffolk.gov.uk/Council/Data_and_information/howweuseinformation.cfm</a> or call Customer Services: 01284 763233 and ask to speak to the Data Protection Officer. |   |

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# **Agenda**

## **Procedural Matters**

### **Part 1 - Public**

***Page No***

**1. Apologies for Absence**

**2. Substitutes**

**3. Public Participation**

Members of the public who live or work in the Borough are invited to put one question or statement of not more than 3 minutes duration relating to items on Part 1 of the agenda only. If a question is asked and answered within 3 minutes the person who asked the question may ask a supplementary question that arises from the reply. A person wishing to speak must register to speak at least 15 minutes before the meeting is scheduled to start. There is an overall time limit of 15 minutes for public speaking which may be extended at the Chairman's discretion.

**4. Minutes**

**1 - 14**

To confirm the minutes of the meetings held on 3 July 2018 and 4 December 2018 (copies attached).

**5. Highways Act 1980 Section 119 - Application to Divert Part of Rougham Public Footpath No 7**

**15 - 42**

Report No: **LIC/SE/19/001**

# Licensing and Regulatory Committee



**Minutes** of a meeting of the **Licensing and Regulatory Committee** held on  
**Tuesday 3 July 2018** at **5.00 pm** in **Conference Chamber West, West  
Suffolk House**, Western Way, Bury St Edmunds IP33 3YU

Present: **Councillors**

**Chairman** Susan Glossop  
**Vice Chairman** Clive Springett

Sarah Broughton  
John Burns  
Mike Chester  
Max Clarke

Wayne Hailstone  
Margaret Marks  
Richard Rout  
Peter Thompson

**Substitutes attending:**

Ian Houlder

Elaine McManus

**By Invitation:**

Jim Thorndyke, Ward Member for Stanton

91. **Election of Chairman 2018-2019**

This being the first meeting of the Licensing and Regulatory Committee since the Council's Annual General Meeting on 17 May 2018, the Business Partner (Litigation and Licensing) opened the meeting and asked for nominations for Chairman of the Committee for 2018-2019.

Accordingly, Councillor John Burns nominated Councillor Margaret Marks as Chairman, and this was duly seconded by Councillor Max Clarke.

The Business Partner (Litigation and Licensing) asked whether there were any further nominations.

Councillor Mike Chester then nominated Councillor Susan Glossop as Chairman, and this was duly seconded by Councillor Wayne Hailstone.

The Committee then took the vote. With the vote being 4 for Councillor Margaret Marks, and 8 for Councillor Susan Glossop, it was

**RESOLVED:**

That Councillor Susan Glossop be elected Chairman for 2018-2019.

Councillor Susan Glossop then took the Chair for the remainder of the meeting and requested nominations for the election of Vice-Chairman.

92. **Election of Vice-Chairman 2018-2019**

Councillor Susan Glossop nominated Councillor Clive Springett as Vice-Chairman and this was duly seconded by Councillor Sarah Broughton, and with the vote being 9 for and 3 abstentions, it was

**RESOLVED:**

That Councillor Clive Springett be elected Vice-Chairman for 2018-2019.

93. **Substitutes**

The following substitutions were declared:

Councillor Ian Houlder for Councillor Mary Evans.  
Councillor Elaine McManus for Councillor Frank Warby.

94. **Apologies for Absence**

Apologies for absence were received from Councillors Mary Evans, Beccy Hopfensperger and Frank Warby.

95. **Minutes**

The minutes of the meeting held on 10 April 2018 were accepted by the Committee as an accurate record and were signed by the Chairman.

96. **Public Participation**

There were no questions/statements from members of the public.

97. **West Suffolk Local Air Quality - Progress Report (2017-2018)**

*[Councillor Sarah Broughton declared a non-pecuniary interest – husband owns land, North-East of Bury St Edmunds, and remained in the meeting during the discussion.]*

*Councillor Margaret Marks declared a non-pecuniary interest - owns property on Withersfield Road, Haverhill, and remained in the meeting during the discussion].*

The Committee received Report No: LIC/SE/18/004, which reported on work undertaken during 2017 to meet Local Air Quality Regulations across the Borough, including specific work in relation to the Great Barton Air Quality Management Area. Attached at Appendix 1 to the report was the West Suffolk 2018 Air Quality Annual Status Report, which followed the required format by the Department for the Environment, Food and Rural Affairs (Defra).

For the majority of the Borough, it was reported that air quality remained good, being below national limits, and continued to show a long-term trend of slight year-on-year improvement. However, there was one monitored location in the Borough which was above the national annual mean objective for nitrogen dioxide in 2017. This being located in the newly formed Air Quality Management Area (AQMA) of Sicklesmere Road, Bury St Edmunds.

Although levels of measured pollutants in all areas of St Edmundsbury remained in compliance with the national objectives, officers were aware that there were negative health impacts related to lower concentrations of certain pollutants, especially particulates. Therefore, work would continue to monitor and improve air quality further.

Attached at Appendix 2 to the report was the Draft Great Barton Air Quality Management Area Action Plan, which had been developed with the support of a steering group that had met on a number of occasions. A number of measures had been considered, some of which were not being pursued presently due to currently being impractical or not having a reasonable funding source. However, a number of measures were being investigated, as detailed in the Action Plan. These included moving the pedestrian crossing, which was currently located immediately adjacent to the AQMA, and improvements to the Thurston Road (Bunbury Arms) Junction of the A143. Both of which were being investigated in conjunction with the Suffolk County Highways officer.

The report also included information on the Heavy Goods Vehicle (HGV) weight restriction on the A1088 between Ixworth and Elmswell, which was primarily within Mid Suffolk administrative area. As a result of this restriction some HGV traffic were not able to use the A1088 when trying to reach the A14, consequently forcing HGVs to use a longer route, often through Great Barton. Officers were making a request to Suffolk County Council Highways to review the HGV restrictions along the A1088, asking for confirmation of the environmental impacts that this restriction supports and how they were judged to outweigh the air quality concerns in Great Barton.

The Chairman then invited Councillor Jim Thorndyke, Ward Member for Stanton to address the Committee in respect of this item. He thanked the Committee for allowing him to speak. He then set out his concerns regarding information contained within paragraphs 3.5 and 3.6 of the covering report relating to the HGV weight restrictions. He explained that several years ago, Suffolk County Council (SCC) had introduced the weight limit restriction along the A1088. Furthermore, the weight restriction did not affect lorries in Stanton as they were able to apply for permits, which were issued/controlled by SCC.

In response to the information provided by Councillor Thorndyke, members expressed disappointment that SCC were unable to provide any reason for the weight limit on the A1088. Officers agreed to look at this further with Councillor Thorndyke outside of the Committee meeting, and would also clarify with SCC how many permits had been issued. Councillor Richard Rout, a member of the Committee, who was also a SCC Cabinet Member for Environment, Public Protection informed members that he would pass

comments onto SCC and Councillor Mary Evans, Deputy Leader of SCC regarding this issue.

The Committee considered the report in detail and asked a number of questions to which responses were provided. In particular discussions were held on the Haverhill relief road and Withersfield Road, Haverhill; continuous monitoring points; including electric charging points at pre-planning application stage; and sought reassurance that Great Barton residents would be consulted on the implementation of the action within the AQMA Action Plan.

Councillor Richard Rout questioned when the Steering Group would be formed to progress the Action Plan for the Sicklesmere Road AQMA, as he wished to be involved. In response officers advised that they would be over the next couple of months identifying key stakeholders to sit on the Steering Group.

In response to a particular question raised regarding electric vehicle charging points, members were informed that there were currently four locations across West Suffolk, with each point having two sockets. There were also plans in place for additional charging points to be introduced.

In response to a question raised relating to Sicklesmere Road and whether a new route would go through the new estate, and what the future impact might be, members were informed that the route of the relief road had been laid out in the planning application.

In response to a question raised, officers agreed to incorporate vehicle numbers in next year's Air Quality Annual Status Report.

In response to a question raised on what action could be taken to mitigate air pollution along Withersfield Road, Haverhill, officers agreed to work with Haverhill Ward Members on ways improvements could be made to air quality.

The Committee also discussed the recent article published in the East Anglian Daily Times on 30 June 2018, stating "West Suffolk carbon emissions 55% higher than the national average", to which officers provided a comprehensive response. The Service Manager (Environmental Health) also took the opportunity to update the Committee on the councils West Suffolk Growth Investment Strategy: Energy Framework, which was approved by the Joint Executive (Cabinet) Committee on 25 June 2018.

There being no decision required, the Committee **noted** the work undertaken in order to improve local air quality in West Suffolk and **supported** the Great Barton Air Quality Management Action Plan.

#### 98. **West Suffolk Food Safety Services Plan 2018-2019**

The Committee received Report No: LIC/SE/18/005, which asked members to consider and support the delivery of a West Suffolk Food Safety Service Plan for West Suffolk.

The report presented a West Suffolk Food Safety Service Plan (Appendix A), covering both the regulatory and support work undertaken by the

Environmental Health Service to protect public health in West Suffolk in respect of the food chain, whether working in food business or a food consumer. As the Plan was an operational document, it would undergo regular review and change in future years. Officers would continue to maintain and enhance dialogue with stakeholders which would help inform any revisions to the Plan, as well as helping to improve the services that the council delivered. The Plan included elements of review over the last year as well as setting out the work for the coming year. It also included information on the introduction of a fast-track re-rating inspection under the Food Hygiene Rating Scheme. The Team Leader (Commercial Environmental Health) then brought to the Committees attention a number of key outcomes set out in Appendix A.

Members considered the Service Plan and asked questions to which the Team Leader (Commercial Environmental Health) provided responses. In particular discussions were held on the new "take-out eat-well" scheme being launched in September 2018; the use of social media and the effects of bad publicity on food premises; and from August 2018 the introduction of charging for re-inspections for the new fast-track re-rating scheme.

Discussions were also held on the Food Hygiene Rating Scheme (0-5) score, which was a national scheme rating, as well as the window sticker, which was currently only voluntary for businesses to display. However, members were informed that the FSA was looking at making it mandatory to display the sticker to drive up food standards.

In response to a question raised, officers agreed to include in next years' service plan the percentage of outcomes following complaints being received by the service.

In response to a question raised regarding staffing levels and the number of low level food interventions being carried forward into 2018-2019, members were informed that staff shortages had now been addressed to deal with the backlog. Work to clear the outstanding lower-risk inspections was being carried out in close liaison with the Food Standards Agency Regulatory Delivery Assurance Team, and it was hoped this would be cleared by the end of December 2018.

Finally, a member of the committee asked whether it would be possible for members to shadow officers on visits to food premises to help them gain a better understand of the work involved, which the Team Leader (Commercial Environmental Health) was happy to arrange with members.

There being no decisions required, the Committee **noted** the West Suffolk Food Safety Service Plan 2018-2019, attached as Appendix A to Report No: LIC/SE/18/005.

The Meeting concluded at 6.15 pm

**Signed by:**

**Chairman**

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# Extraordinary, Informal Joint Licensing and Regulatory Committee



**Notes of Extraordinary, Informal Discussions held on Tuesday 4  
December 2018 at 5.30pm in the Council Chamber, District Offices,  
College Heath Road, Mildenhall**

PRESENT: St Edmundsbury Borough Council (SEBC)

Councillors Sarah Broughton, John Burns, Mike Chester, Susan Glossop,  
Wayne Hailstone, Margaret Marks and Clive Springett.

Forest Heath District Council (FHDC)

Councillor Brian Harvey  
(Chairman of the informal discussions)

Councillors Chris Barker, John Bloodworth, Simon Cole, Victor  
Lukaniuk, Carol Lynch, Christine Mason, Nigel Roman and Reg  
Silvester.

IN ATTENDANCE: Councillor Patricia Warby

Prior to the formal meeting, at 5.30pm informal joint discussions took place on the  
following item:

(1) Hackney Carriage Fare Review 2019 Stage 2 – Alignment for Single Council.

All Members of St Edmundsbury Borough Council's Licensing and Regulatory  
Committee had been invited to attend the District Offices, Mildenhall to enable joint  
informal discussions on the above report to take place between the two authorities.

The Business Partner (Litigation/Licensing) welcomed all those present to the District  
Offices, Mildenhall and advised on the format of the proceedings for the informal joint  
discussions and subsequent separate meetings of each authority, prior to handing  
over to the Vice-Chairman of Forest Heath District Council's Licensing and Regulatory  
Committee, who would be chairing the informal joint discussions.

Members noted that each Council permitted public participation at their Licensing and Regulatory meetings. Therefore, for the purpose of facilitating these Constitutional requirements, it was proposed that public speaking should be permitted prior to the start of the informal discussions to enable any questions/statements to be considered by both Licensing and Regulatory Committees on the above item.

On this occasion there were three questions / statements put forward by members of the public.

### **Public Participation**

Mr Rob Dorling, a St Edmundsbury Hackney Driver / Owner addressed the Committee on Item 4 on the agenda; Hackney Carriage Fare Review 2019 Stage 2 – Alignment for Single Council.

He informed the members he was speaking on behalf of 39 Hackney Drivers in Bury St Edmunds. After the phase 1 changes to the meters we were astonished to find it had resulted in a “huge health and safety issue”. Before the changes the eight staged fares ran up smoothly throughout the journey and passengers were happy to pay. After the changes were made we had to add the extra fares for more than four passengers on at the end, and this looks like the drivers were illegally bumping up the fares. This has resulted in abuse and non-payment of fares. We have documented 150 plus incidents of violent abusive behaviour. Consequently takings have dropped by approximately 20% after 11pm. We have in the last few weeks been demonstrating the problems with the meter system and calculations to the Licensing Authority and seem to have found a few methods of keeping the drivers work environment safer again. We also did not ask for increased fares from 11pm instead of midnight and the public has not taken this lightly either. We are a key part of the late night public order control in the town and deserve some support to get the public home safely. By working together this can be achieved but the opposite is also a problem. If drivers all decide to go home early and leave the rank full of drunk cold people after 11pm because they do not feel safe to work this would obviously result in a lot more policing pressure and we do not want this to happen. As the Licensing Team Leader will tell you we want to co-operate on this huge merger change over the next couple of years and we have come a long way in our understanding of each other’s positions brought to a head by government politics and not either local authority or drivers faults. This is why we have put these proposals forward.

Mr Mark Goodchild, a St Edmundsbury Hackney Driver / Owner addressed the Committee on Item 4 on the agenda; Hackney Carriage Fare Review 2019 Stage 2 – Alignment for Single Council. He informed members that before the last change of fares in June 2018, now only get 3.3% extra in our takings. I don’t want to increase fares during the day and the night rate will go down by 3½%.

Mr Steve Hume, a St Edmundsbury Hackney Driver / Owner addressed the Committee on Item 4 on the agenda; Hackney Carriage Fare Review 2019 Stage 2 – Alignment for Single Council. He informed members that he worked in Bury St Edmunds and that he disagreed with the figures set out in the report. He explained that there were 75 hackney vehicles and 400 drivers. He questioned members as to whether they would take a 3½% cut in takings. I’m working day and night to make that money up and it’s a danger to the public.

The Chairman thanked the public speakers for their attendance and contribution to the meeting.

The report was then considered as set on each authorities agenda.

1. **Hackney Carriage Fare Review 2019 Stage 2 – Alignment for Single**

The Assistant Director (Planning and Regulatory) presented the above report and supporting PowerPoint Presentation, which informed members on preparations in relation to the hackney carriage fares for the creation of a single and West Suffolk Council and addressed issues raised during the Stage 2 consultation process, including increasing transparency around a particular additional charge drivers could add to the fare.

It was reported that Section 65 of the Local Government (Miscellaneous Provisions) Act 1976 empowered local authorities, at its discretion to set the fares charged by Hackney Carriages licensed within their district or borough. The powers under the Act extended to fixing or varying the rates of fares within its area at the discretion of the authority. It also included related charges involved in Hackney Carriage vehicle hire by means of a table of fares. This included set tariffs, which applied at different times and dates and additional charges including extra passengers, luggage or animals. The Act also set out a statutory procedure for authorities to vary fares charged by hackney Carriage drivers. It should be noted that, when setting Hackney Carriage Fares, there was no requirement under the Act to take into account external factors, and there was no limit on the amount of increase or variation.

As part of preparing to become one Council in April 2019, a staged process had been undertaken to review fares. Stage 1 of the review included agreement on the principle to align fares across West Suffolk. Relevant policy development had also been undertaken in parallel to review how taxi licensing policies were to be harmonised. The trade had been involved in both processes at appropriate stages.

The report included information on the background; alignment of fares; consultation overview; outcomes of stage 2 consultation; public consultation; approach and four options; recommended option and other factors. Also attached to the report were a number of appendices, namely:

- Appendix 1: Current fares cards and Stage 2 consultation fare card;
- Appendix 2: Fare and card options;
- Appendix 3: Consultation form;
- Appendix 4: Fare comparisons;
- Appendix 5: Trade consultation raw data;
- Appendix 6: Signed petition from drivers (covering letter only); and
- Appendix 7: Equality Impact Assessment.

Care had been taken to ensure the recommended tariffs represented a fair price for customers across West Suffolk, whilst ensuring they provided a sustainable wage for Hackney Carriage drivers. The proposed fares included a 3.3% fare rise which reflected the average rise in consumer price index and fuel costs since fares were agreed in April 2018.

A key issue raised during the consultation was transparency and the current issue of the "extras" button being pressed on the meter at the end of the journey for carrying five or more passengers, which was too complex and had led to mistrust and inappropriate behaviour by passengers towards drivers, which members had heard first hand from drivers this evening under "public participation".

The option to make no change was not recommended, as it would contradict the wider approach of harmonising fees and charges for customers across the new single council area.

The Committee was asked to consider the following four options:

- Option 1: Was the proposed Stage 2 tariffs consulted upon along with alternative ways to charge for additional passengers (alternatives (i), (ii) and (iii)).
- Option 2: Was a suggestion from one member of the trade.
- Option 3: Was the St Edmundsbury 2015 fare tariffs supported by some St Edmundsbury drivers.
- Option 4: Was a driver-modified version of the St Edmundsbury 2015 tariffs.

The recommended option put forward by officers was Option 1(i), as it provided a more transparent way of covering any additional costs of carrying five or more passengers in a wheelchair accessible vehicle (or mini-van).

The Committees' considered the report in detail and asked a number of questions to which comprehensive responses were provided. Discussions were held on the difference between fuel prices in Haverhill compared to Bury St Edmunds; the low number of consultation responses received from Hackney Drivers; and the running mile.

In particular detailed discussions were held on the following areas:

**Additional charges: £1 extra per journey starting at Rowley Mile racecourse on race days**

Members discussed the additional charge for Rowley Mile racecourse on race days and questioned why the July racecourse was not included.

In response members were informed that this was a proposal put forward by one taxi driver from Newmarket. Officers explained that the proposal was included as an option for the members to consider. Officers informed members that there was a free shuttle bus from the Rowley Mile racecourse to Newmarket, and Hackney drivers felt they were providing an extra service.

Regarding the July racecourse, members were informed that there was a private taxi rank on their land. Also there was an accreditation scheme whereby Hackney Drivers from East Cambridgeshire and Forest Heath were invited to join the scheme to enable them to pick up and drop off from the July racecourse.

Officers agreed when the next review was carried out, Hackney Drivers would be consulted on this issue.

Following the conclusion of discussion on this particular point, the general consensus reached by the two Committees was to remove the £1 extra per journey starting at Rowley Mile racecourse.

### **Statutory public consultation**

In response to a question raised regarding the last public consultation, members were informed that the consultation was advertised on Facebook in the spring every day for two weeks, and in the East Anglian Daily Times.

It was suggested that the public consultation should also be advertised in taxis to reach a wider audience, which officers agreed to look into.

### **Tariff hours**

Members discussed the night time hours and questioned when the fare hours change from midnight to 11pm. In response members were informed that the change in hours was consulted on in January 2018 and July 2018.

Members had concerns around the hours as St Edmundsbury customers did not like them as they were used to the night tariffs starting at midnight; drivers wanted them reverted back to what they were prior to June 2018; and there was also the issue of protecting vulnerable people in the late evening.

Officers explained that there should not be loss of income from the change in hours. In Forest Heath the night time rate had always been 11pm and in St Edmundsbury, midnight. The change made to the night time rate in 2018 was to bring parity across the two authorities. There was always the option for further reviews in the future.

Following the conclusion of discussion on this particular point, the general consensus reached by the two Committees was to change the night time from 11pm to Midnight on all tariffs.

On the conclusion of the informal joint discussions at 6.50pm all members remained in the Council Chamber.

The Vice- Chairman in the chair, then formally opened the St Edmundsbury Borough Council Licensing and Regulatory Committee in the presence of Forest Heath members, in the Council Chamber at 6.53pm.

# Licensing and Regulatory Committee



**Minutes** of a meeting of the **Licensing and Regulatory Committee** held on **Tuesday 4 December 2018** at **6.53 pm** in the **Council Chamber, District Offices**, College Heath Road, Mildenhall, IP28 2EY

Present: **Councillors**  
**Vice-Chairman in the chair** Clive Springett

Sarah Broughton  
John Burns  
Mike Chester

Susan Glossop  
Wayne Hailstone  
Margaret Marks

**By Invitation:**  
Patricia Warby

## 99. **Apologies for Absence**

Apologies for absence were received from Councillors Mary Evans, Diane Hind, Beccy Hopfensperger and Richard Rout.

Councillor Peter Thompson was also unable to attend the meeting.

## 100. **Substitutes**

There were no substitutions declared.

## 101. **Public Participation**

This item was considered in the informal joint session with Forest Heath District Council, whereby the Committee heard from three Hackney Carriage drivers.

## 102. **Hackney Carriage Fare Review 2019 Stage 2 - Alignment for Single Council**

Further to the informal joint discussions held prior to the meeting with Forest Heath District Council's Licensing and Regulatory Committee, the Committee formally considered Report No: LIC/SE/18/006.

Councillor Margaret Marks moved the recommendations, this was duly seconded by Councillor Sarah Broughton and with the vote being unanimous, it was:

**RESOLVED: That**

- 1) Fares should be aligned, and take effect before the 1 April 2019.**
- 2) Option 1 and 1(i), as set out in Report No: LIC/SE/18/006, as an approach for charging for journeys with over 4 passengers, be approved, subject to the following two amendments:**
  - i) The removal of the £1 extra per journey starting at Rowley Mile racecourse on race days; and**
  - ii) The hours be changed from 11pm to midnight on all tariffs set out in Option 1 and 1(i).**
- 3) The effective date of the implementation of the aligned fares be on 7 January 2019, subject to the statutory procedure relating to public consultation, be approved.**

The Meeting concluded at 6.54 pm

**Signed by:**

**Chairman**

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# Licensing and Regulatory Committee



*St Edmundsbury*  
BOROUGH COUNCIL

|                              |  |
|------------------------------|--|
| <b>Title of Report:</b>      | <b>Highways Act 1980 Section 119 - Application to Divert Part of Rougham Public Footpath No 7</b>  |
| <b>Report No:</b>            | <b>LIC/SE/19/001</b>   |
| <b>Report to and date/s:</b> | Licensing and Regulatory Committee – 29 January 2019   |
| <b>Portfolio holder:</b>     | Councillor Peter Stevens<br>Portfolio Holder for Operations<br><b>Tel:</b> 01787 280284<br><b>Email:</b> <a href="mailto:peter.stevens@stedsbcc.gov.uk">peter.stevens@stedsbcc.gov.uk</a>  |
| <b>Lead officer:</b>         | Cheryl Froud<br>Job Title: Highways Officer<br>Property Services<br><b>Tel:</b> 01284 757319<br><b>Email:</b> <a href="mailto:Cheryl.Froud@westsuffolk.gov.uk">Cheryl.Froud@westsuffolk.gov.uk</a><br><br>Darren Dixon<br>Job Title: Service Manager, Property<br><b>Tel:</b> 01284 757678<br><b>Email:</b> <a href="mailto:darren.dixon@westsuffolk.gov.uk">darren.dixon@westsuffolk.gov.uk</a> |
| <b>Purpose of report:</b>    | To seek authority to make an order to divert part of Rougham Public Footpath No 7 under the provisions of Section 119 of the Highways Act 1980 as shown on the map at Appendix 1, in light of an objection from a local resident. A location map and images are attached at Appendix 2.  |
| <b>Recommendation:</b>       | <b>It is recommended that, Councillors</b><br><br><b>(1) Consider the application for diversion of a footpath; and</b><br><br><b>(2) Give authority to make an Order</b>   |

|  |   |   |
|--|---|---|
| <b>Key Decision:</b>   | <i>Is this a Key Decision and, if so, under which definition?</i><br>No, it is not a Key Decision - <input checked="" type="checkbox"/>   |   |
| <b>Consultation:</b>   | <ul style="list-style-type: none"> <li>See Paragraph 4</li> </ul>   |   |
| <b>Alternative option(s):</b>  | <ul style="list-style-type: none"> <li>If a decision is taken that an Order should not be made to divert the footpath as proposed the applicants have no right of appeal. They do have the option of requesting Suffolk County Council to make an Order but an application of this nature is normally referred to the Borough Council and would take a low priority at the County Council. If no Authority is prepared to make an order the applicants can request the Secretary of State to do so. However, the Secretary of State exercises powers to make Orders only very rarely and in exceptional circumstances.</li> </ul> |   |
| <b>Implications:</b>   |   |   |
| Are there any <b>financial</b> implications?<br>If yes, please give details  |   | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/><br><ul style="list-style-type: none"> <li>See Paragraph 7</li> </ul>  |
| Are there any <b>staffing</b> implications?<br>If yes, please give details   |   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>   |
| Are there any <b>ICT</b> implications? If yes, please give details   |   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>   |
| Are there any <b>legal and/or policy</b> implications? If yes, please give details                                 |   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>   |
| Are there any <b>equality</b> implications? If yes, please give details  |   | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>   |
| <b>Risk/opportunity assessment:</b>  |   | Covered in the report   |
| <b>Ward(s) affected:</b>   |   | Rougham   |
| <b>Background papers:</b><br><i>(all background papers are to be published on the website and a link included)</i> |   | See attached  |
| <b>Documents attached:</b>   |   | Appendix 1 – Proposal map<br>Appendix 2 – Location map & images<br>Appendix 3 – Applicants’ statement of reasons for requesting the Order<br>Appendix 4 – Letter of objection dated 21 October 2015 |

## **1. Background**

1.1 The Borough Council has received an application to divert part of Rougham Public Footpath No 7, which crosses the garden of a property known as Water Cottage. The application was submitted by the owners of Water Cottage on the grounds that it is in their interests to divert the footpath for reasons of privacy and security. The full statement of reasons for the application is attached at Appendix 3.

1.2 The proposal also includes a minor diversion of a section of Footpath No 7 which crosses a meadow to the north east of Water Cottage. The proposed route through the meadow closely reflects the route that members of the public are currently walking. The owners of the meadow have consented to the diversion proposal.

1.3 The existing definitive (legally recorded) route of the footpath is not currently available. It is obstructed by an established boundary hedge at point C on the map, a post and wire fence at point B and dense vegetation south of point B. There is no bridge across the ditch at point B.

Walkers have been using an unofficial route for many years and currently access the applicants' land from the adjacent meadow through a pedestrian gate at point D. The route across the garden of Water Cottage is not clearly defined. Walkers currently exit the applicants' property via a stile at point G. The stile is not on the definitive line of the footpath.

1.4 The existing footpath has no legally recorded width. The proposed footpath will be 2 metres width. The applicants are proposing to remove the laurel hedge between points G – F and the conifer hedge between points D – E to achieve this width.

## **2. Legislation**

2.1 Before making an order under section 119 of the Highways Act 1980 ("the Act") an authority must be satisfied that:

- i. it is expedient to divert the footpath in the interest either of the public or of the owner, occupier or lessee of the land: and
- ii. the diversion order does not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public. Nor can the termination be altered where this is not on a highway (i.e. a cul de sac)

2.2 Before confirming an order an authority must be satisfied that:

- i. the diversion is expedient in the interests of the person(s) stated within the order;

- ii. the path will not be substantially less convenient to the public as a consequence of the diversion; and
  - iii. it is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole and on land crossed by the existing path or to be crossed by the new one, taking account of the provisions for compensation.
- 2.3 Section 29 of the Act requires that in exercising its functions under Section 119 of the Act an authority must have due regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features. The term 'agriculture' includes the breeding or keeping of horses.
- 2.4 Section 119(6A) of the Act requires that regard must be had to any material provisions of Suffolk County Council's Rights of Way Improvement Plan.
- 2.5 It is appropriate for an authority to consider whether the tests for confirmation can be met when deciding whether to make an order.
- 2.6 An order must satisfy all the legal tests if it is to be confirmed. It is not sufficient for an order to satisfy some of the tests and not others.
- 2.7 The intention of the legislation is to balance the private interests of the owner of land with the public interest.

### **3. Consideration of the tests**

#### **3.1 Expediency in the interests of the owners of the land**

The applicants' statement of reasons at Appendix 3 clearly explains why they believe it is in their interests to divert the section of Footpath No 7 which crosses their property. The diversion will take the footpath further from their property enabling them to enjoy the property without their current fears about privacy and security.

#### **3.2 Termination points and convenience of the public**

The termination points are unchanged.

The proposed route is more circuitous and longer than the existing route where it passes through the applicants' garden so there is an element of inconvenience. However, the nature of the footpath is such that its usage is likely to be primarily recreational and, in this context, the relatively short additional distance to be walked cannot be regarded as a substantial inconvenience.

The section to the north east of the applicants' land is to an extent already being walked on the proposed alignment. It is a very short distance from the existing route.

Paragraph 1.3 referred to obstructions on the existing route. In considering whether a right of way will be substantially less convenient to the public the

advice from the Planning Inspectorate states that any temporary circumstances preventing or diminishing the use of the footpath should be disregarded. The convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

### **3.3 Effect on public enjoyment of the path as a whole**

The existing footpath through the applicants' garden is a very open route with clear views of their cottage. Some walkers will experience feelings of embarrassment or intrusion when using the footpath and this is likely to detract from the enjoyment of the footpath. For those walkers the proposed route will be more enjoyable.

The proposed route will be 2 metres wide. It will be clearly defined and easy to follow and some limited views of Water Cottage will be retained.

The proposed change to the footpath in the meadow to the north east of Water Cottage will have no discernible effect on public enjoyment of the footpath as a whole.

### **3.4 Effect on other land served by the existing public right of way and the effect the new public rights of way would have as respects the land over which the right is so created and other land held with it**

The proposal will have a positive impact on the land within the curtilage of Water Cottage and no discernible effect on the adjacent meadow.

The diversion will have the effect of precluding use of the land over which the right of way is created for any purpose which is incompatible with the existence of the public footpath. This is acceptable to the owners of the land.

### **3.5 Duty to have regard to any material provision of Suffolk County Council's Rights of Way Improvement Plan (RoWIP)**

The proposal is not contrary to any of the provisions of Suffolk County Council's RoWIP 2006-16.

### **3.6 Duty to have regard to the needs of agriculture and forestry and the desirability of conserving flora, fauna and geological and physiographical features**

Suffolk Wildlife Trust has been consulted and has made no comments on the proposal. There are no adverse effects on agriculture and forestry.

## **4. Consultations**

- 4.1 Informal consultations have been carried out in accordance with best practice guidance. Rushbrooke with Rougham Parish Council and the Borough Councillor are in support of the proposal. The British Horse Society, the Ramblers and the statutory undertakers have no objections. The Byways and Bridleways Trust and the Open Spaces Society did not reply. A local resident, was included in the informal consultations as he had responded to a pre-

application site notice. His objection to the proposal is unresolved and is considered below.

Suffolk County Council submitted a holding objection to the proposal on 19 November 2016 to allow further discussions to take place with a view to including the section of footpath west of Water Cottage in the diversion proposal. The proposal was not extended but the holding objection was withdrawn on 18 January 2018.

## **5. The objection and comments on the objection**

- 5.1 An objection to the proposal dated 21 October 2015 is attached at Appendix 4. Since the objection was submitted there has been lengthy correspondence, telephone discussions and a meeting between Sharon Berry, the Rights of Way Specialist dealing with the application on behalf of the Borough Council, and the Objector. Suffolk County Council's Senior Definitive Map Officer has also been involved. However, it has not been possible to resolve the objection and the Objector confirmed on 19 December 2017 that his views have not changed.

The key points are summarised below:

### **5.1(1) The legally recorded alignment of the existing footpath**

The Objector correctly states that the alignment of the footpath on the ground does not accord with the legally recorded alignment as shown on the definitive map. He believes that in the interests of expediency the true alignment of the footpath should be ascertained using powers available to Suffolk County Council under Section 53 of the Wildlife and Countryside Act 1981 before the diversion proposal is considered.

Section 53 of the Wildlife and Countryside Act 1981 makes provision for the Definitive Map and Statement to be kept under continuous review, and for what are known as Definitive Map Modification Orders (DMMO) to be made where the evidence supports it. The only criterion which the County Council may take into account under the 1981 Act is evidence. No consideration may be given to other factors such as the effect on the environment, the suitability of the route for a particular purpose, or the wishes of landowners or users.

Suffolk County Council's views on the objection have been requested. In a response dated 3 March 2015 the County Council acknowledged that there appeared to be a discrepancy between the definitive and walked alignments and that there was a possibility that the walked alignments may have acquired rights if they had been walked for over 20 years. However, it was not felt that there would be any public benefit from doing a DMMO investigation or making a DMMO to resolve the discrepancy. The County Council view was that a DMMO would be costly to the tax payer while delivering little significant benefit since a route was available and in use on the ground and that all the alignment issues could be addressed by the public path order proposal being considered by the Borough Council.

On 12 July 2016 the County Council advised the applicants that the Footpath No 7 alignment discrepancy is one of a large number of such cases. There are

many more cases than the County Council is able to progress so a prioritising system is in place which gives priority to those cases which potentially deliver the greatest public benefit. The Footpath No 7 alignment discrepancy would not score highly and it would therefore be a low priority for investigation and order making.

If it is decided that a public path diversion order should be made discussions will take place with the County Council to determine the extent of any unrecorded rights to be included in the diversion order, i.e. any unrecorded rights across the garden of Water Cottage can potentially be diverted together with the recorded rights.

Although the Objector believes there may be unrecorded footpath rights and that the Definitive Map is incorrect he has not submitted a claim for this to be investigated and the County Council has confirmed that no other claims have been submitted.

5.1(2) The location of the existing stile and the re-instatement of the legally recorded route

The Objector has concerns that a gap will need to be cut in the beech hedge forming the boundary to Water Cottage if the diversion application is successful. The current boundary crossing point is via a stile approximately 10 metres to the north of the definitive route. A gap should already be in place in the beech hedge at point C on the map regardless of whether a diversion order is made. It will be for the applicants to decide whether they wish to remove the stile which is currently in place on this boundary if their diversion application is successful. They may choose to leave it where it is.

There are also concerns about what will happen to the footpath on the land to the west of Water Cottage if the diversion application is successful. It will be for the County Council to decide how to deal with the alignment of the footpath west of Water Cottage if the diversion application is successful. The current definitive route has been surveyed by the County Council and the County Council does not share the concerns raised by the Objector about public safety should the definitive route be re-instated. The County Council has not expressed any intention to re-instate this section of the definitive route.

5.1(3) The removal of the direct line of the footpath

The Objector does not wish to lose the direct line of the footpath across the garden of Water Cottage and believes that the test that the path as a whole "*will not be substantially less convenient as a consequence of the diversion*" cannot be met. As mentioned above, the nature of the footpath is such that its usage is likely to be primarily recreational and in this context the relatively short additional distance to be walked cannot be regarded as a '*substantial inconvenience*' although as mentioned in Paragraph 3.2 it is recognised that there is an element of inconvenience.

5.1(4) The effect of the diversion proposal on public enjoyment of the footpath

The Objector believes that public enjoyment of the footpath will be “much reduced” by the diversion. He states that there is no advantage to the public. It should be noted that there is no requirement for an order made in the interests of the owners of land crossed by a footpath to confer an advantage to the public.

The loss of the direct route and some of the current views must be balanced against the benefit to some walkers of being further from the cottage, therefore minimising any feelings of intruding into a private space.

## **6. Determination of opposed orders**

- 6.1 If an objection is received to an order, which is not withdrawn, the Council has no powers to determine the objection or to confirm the order. The Council can decide not to proceed with the order or it must be referred to the Secretary of State for the Environment, Food and Rural Affairs (SoS) for determination, where an Inspector will normally be appointed to determine it. The SoS has powers to either refuse confirmation of an order, to modify an order or to confirm the order as submitted by the Council. Before doing so he or she is required to hold either a local public inquiry or a public hearing or to consider written representations made by the affected parties.
- 6.2 On submission of an opposed order to the SoS the jurisdiction passes to the Planning Inspectorate (PINS) for the SoS. The objector may exercise their right to be heard or PINS may consider that a local inquiry is the method by which the order should be determined. The order cannot be abandoned by the order making authority (OMA) at this stage because the OMA does not have jurisdiction (Paragraph 1.7 of the ‘Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England – January 2018’).

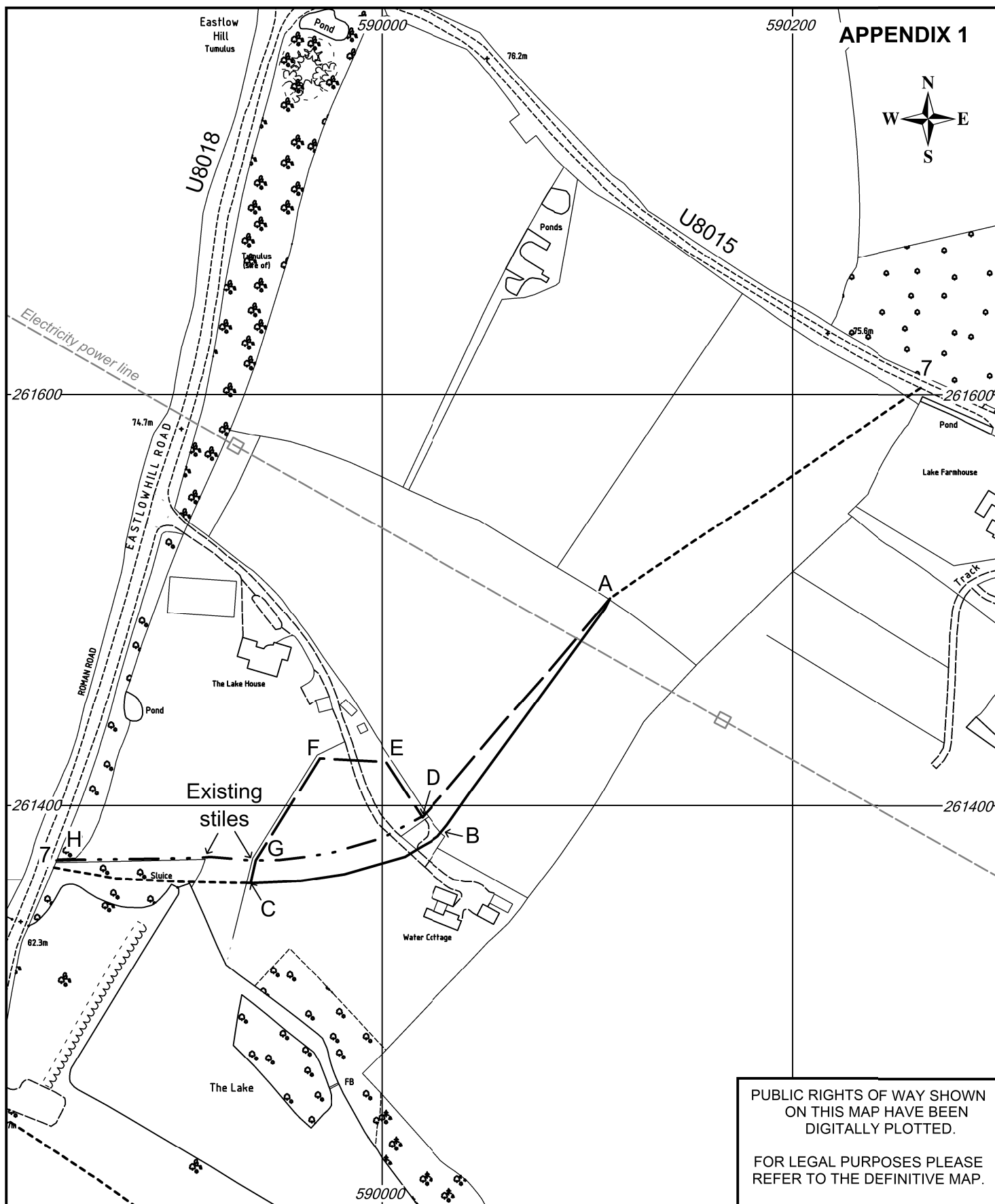
## **7. Costs**

- 7.1 Some of the costs of the specialist advice required to assess the application will be recovered from the applicants. They agreed to pay £1500 at the start of the process, which was the Borough Council’s standard charge for public path order administration at the time. In addition to the £1500, they also agreed to pay the costs of advertising and site works. To date the costs for a rights of way specialist to deal with the application on behalf of the Borough Council amount to £4098.29. If a legal order is made and subsequently confirmed this will incur additional costs. These costs are likely to be in the region of £800 - SCC has agreed to contribute £300 towards SEBC’s order making costs in recognition of the complications that have resulted from the mapping anomaly and the fact that these are outside the control of SEBC or the applicant
- 7.2 If a legal order is made and it is opposed the Council cannot charge for costs incurred during the process of determining the opposed order. These costs will vary depending on how the order is determined (see Paragraph 6 above) but could range from £1000 up to £5000.

## **8. Conclusion**

- 8.1 The purpose of a public path order is to allow changes to be made to the rights of way network to suit evolving needs and to ensure that, in making those changes, opposing interests are not disproportionately affected. In this case there is a fine balance between public and private interests. The tests for an order under Section 119 of the Highways Act 1980 can be met although the objection and associated costs arising from the matter being referred to the Secretary of State for the Environment, Food and Rural Affairs should be noted.

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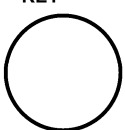


Proposed Diversion of Rougham Public Footpath No 7 (part) -  
Highways Act 1980 Section 119

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KEY



Location of proposed diversion

1:30000

Please note: Do not scale from this plan

Forest Heath & St Edmundsbury councils

**West Suffolk**  
working together



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**PROPOSED DIVERSION OF ROUGHAM  
PUBLIC FOOTPATH NO 7 (PART)  
27 - HIGHWAYS ACT 1980 SECTION 119**

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## **Proposed Diversion of Part of Rougham Public Footpath No 7 – Highways Act 1980 Section 119**

Statement of reasons for requesting the diversion of part of Rougham Public Footpath No 7

### Current situation

We were unaware until we moved into Water Cottage that the present footpath does not follow the 'definitive route' and that the situation cannot remain as it presently stands. Having taken advice from 'The Area Rights of way Officer' the proposed route would resolve the issue.

The present footpath runs across the lawn directly in front of our house with nothing to stop users looking straight into the front windows and glass door. The route has finger posts showing the direction of the path but it is not actually demarcated on the ground by any kind of edging or boundaries because this would totally spoil the lawn and make grass cutting nigh on impossible. People using the footpath range in personalities from those who are obviously embarrassed at being so close to the house and crossing someone's private garden and therefore scurry through (walkers have told us this themselves) to those in large groups who feel they can wander ten or more abreast using as much of the garden as they want to as though it is a public park -this includes allowing their dogs to run around and defecate wherever. Some will stop and stare at the house and us if we are sitting or working in the garden with no care whatsoever for our privacy.

### Current Privacy Issues

The front patio is the main outside seating area as it gets the afternoon and evening sun. It is where we sit and eat and entertain family and friends during the summer months. This is spoiled at the moment by the proximity of the footpath users.

### Privacy advantages of proposed route for us and walkers

Moving the path would allow us and our family to be able to relax and enjoy ourselves without interruptions and without being gawked at.

If the footpath followed the proposed route around the edge of the garden it would be possible to have clearly defined edges and be surfaced with shredded bark without spoiling the aesthetics of the garden whilst allowing easy cutting of the the lawn. This demarcation would encourage walkers to remain on the actual path. The path would be further from our home frontage and have some trees and shrubs between it and the house giving us much more privacy. It would also allow those embarrassed walkers to enjoy the footpath much more. They will feel more confident to pass through the garden and feel they are not intruding into our private space. Public enjoyment will be enhanced by them having an even more rural experience.

### Current Security Issues

Where the footpath is presently situated enables walkers to clearly see if the front door or windows are left open and if valuables are left on the the table on the front patio. Therefore, leaving the front of the house, even just to make a cup of tea in the kitchen at the back of the house, gives someone the opportunity to gain access to our possessions and this causes us to worry. At the moment it is unsafe for children to roam freely in the garden where the public pass through. Walkers can presently come into contact with children playing in our front garden so they have to be watched whilst out or corralled into an area where they can be closely supervised.

When my wife and I are away for regular periods to support aged parents in the north of England one of our daughters is here alone. When she is by herself, in what is a fairly isolated location, seeing walkers close by who can easily see her, makes her feel vulnerable, especially if the walker is a lone male, passing by when it is dusk or dark. My wife experiences the same anxiety when she is alone in the house.

Security advantages of proposed route.

If the path were moved to the proposed position it would be further from the house and there would be very restricted views of the house with virtually no views of the lower ground floor windows and door and patio which would make us feel much more secure and safer, especially when one person is in the house alone.

Additional information

According to the Valuation & Estates Manager dealing with this matter at St Edmundsbury Borough Council the change we are applying for is a diminutive one for walkers but significant for our security and privacy. The proposed change has the support of the Parish Council who have discussed it at their recent meeting and the Parish's Footpath Warden. The Ramblers Association have raised no objections either.

We purchased Water Cottage with the intent of it being our retirement home where we would remain in peace until old age or health made it no longer feasible. During our first week here we were informed about the whole issue of the footpath not following the 'definitive route' and the legalities involved and that the situation cannot remain as it presently exists but must be addressed. This along with the lack of privacy and security has caused us considerable stress and worry. If the change to the proposed route is agreed it would relieve us of the stress and worry which has been hanging over us for some considerable time and would allow us and our family to enjoy the house and gardens as we hoped when we moved here.



## MID SUFFOLK DISTRICT COUNCIL

Return to: Ms S Berry, Communities Officer (Public Rights of Way)  
Mid Suffolk District Council, Council Offices, 131 High Street,  
Needham Market, Ipswich, IP6 8DL or  
email Sharon.berry@baberghmidsuffolk.go.uk

From: Peter Newlands

File Ref: T160

### SUBJECT:

Highways Act 1980 Section 119

Proposed Diversion of Rougham Public Footpath No 7(part)

Please delete as appropriate:

- a) ~~I have no comments on or objections to the above proposal.~~
- b) ~~I support the above proposal.~~
- c) My comments on the above proposal are as follows (please expand on a separate sheet if necessary):

I have been using this path for around 30 years. As a result of the process leading up to this application it has been discovered that the path on the ground does not follow the line on the definitive map. In a submission dated 27<sup>th</sup> February 2015 I challenged Suffolk County Council (SCC) to deal with the matter as required by the Wildlife and Countryside Act 1981. They declined. This makes raising an objection to the proposed alteration more complicated than it should be. Also, I didn't think that entities such as Councils could disregard the law so easily and dismissively as per the Public Rights of Way Services letter to me dated 22<sup>nd</sup> September 2015. Either something is illegal or legal. If it is illegal and there is a mechanism for correcting such an error, this is surely what must be done. Then the process of making alterations, such as those proposed here, can be undertaken correctly. For the sake of clarity, the whole distance shown on the plan A to B to C to western fig.7, is the definitive path route. None of this line has been used on the ground whilst I have been using this path. It would have been helpful if SCC had provided a plan with the line on the ground added in so the adjudicators of this application can see what is actually being requested to be changed.

- d) I object to the above proposal for the following reasons (please expand on a separate sheet if necessary):

Given my comment in c) above please see my objection reasoned on the attached sheets (4).

Signed: Peter Newlands (a signed original of this page has been sent via Royal Mail)

Dated 21<sup>st</sup> October 2015

**SUBJECT:****Highways Act 1980 Section 119****Proposed Diversion of Rougham Public Footpath No 7(part) (continued)**

d) (continued from Frontpage) I object to the above proposal for the following reasons:

I have had continuous and uninterrupted use of the clear and officially marked line of this path, as it is on the ground, for around 30 years and continue to use it frequently. I understand that an application to move the line of a public footpath has to satisfy four tests:

1. Expedient in the interests of the parties stated
2. Termination point of new path substantially as convenient to the public
3. Path as a whole must not be substantially less convenient to the public
4. Is it expedient having regard to the effect on public enjoyment of the path as a whole

I submit as follows:

**Number 1:** This test fails because:

a) Expedience, to correct a prevailing wrong which is the whole of the line between A to west fig.7 on the plan, as the SCC has discovered exists, cannot cover up an illegality. See my comment under C on the front page. The Rights of Way department compounded the SCC 'error on the ground' as recently as 2011 when they repaired the railway sleeper ditch crossing point by D on the plan. It begs the question as to why the map was drawn so inaccurately or, why the path has been allowed to exist where it is. (see next point b). If it is so important to 'upset the applecart' then, when opportunities have arisen previously, SCC representatives have been negligent in not pursuing corrections during those opportunities.

b) The statement on the plan, under "Key", that the dotted line, C to west fig.7 as "Unaffected Path", is not true. There is no current 'path on the ground' along this line. In fact due to obvious tree growth and subsequent decay there appears to be sufficient evidence that this line has probably never ever been used! The actual used line 'on the ground' is from the dog-leg corner just (to the north of C on the plan) to the opposite western corner of Lake House garden boundary then immediately alongside and south of the fence (part of the southern boundary of Lake House garden) to the road, slightly further north than shown as the exit point on the plan. However, a series of 'yellow painted top' posts has, this year, been positioned to mark this dotted line on the plan (C to west fig.7), on the ground. Is this to evidence to where the current path will be moved to (although this movement is not requested in this application) when and if this proposal is sanctioned and implemented?

c) The cost to SCC of removing the current tree obstructions and the danger that SCC will expose the public to because of the closeness (less than 12 inches) to the Rushbrooke Lake outflow gully, which is 2½ to 3 feet deep, that the plan line takes between C and west fig.7. It is in nobody's interests to open this line up. The current on the ground dog-leg corner to west fig.7 is a good user friendly path and should not

be altered to satisfy a 'wrong' that is the definitive map line. It just underlines the sensibility of redefining the definitive map line under the Wildlife and Countryside Act 1981 before considering any other application for change as the current residents of Water Cottage would prefer.

d) It would appear to be more expedient to spend money on complying with the requirements of the Wildlife and Countryside Act 1981 (too expensive to do so is the major reason given by SCC in the letter to me of 22<sup>nd</sup> September 2015 for not taking the compliance course of action) rather than spend it, and more, clearing the obstructions, making good/replace the fence introducing a new boundary crossing and remove the existing stile in the southwest garden boundary of Lake House to facilitate the 'on the quiet' intention of replacing the current existing line on the ground with this new line shown on the plan to match the line on the definitive map between these points.

e) The dotted line A to D on the plan already exists on the ground. Of course it is expedient for SCC to deal with this wrong under a Highways Act 1980 amendment as it is cheaper for them to do so. However, is it the legal route? However, where also is the consistency? Allowing an application to the definitive map from AB to AD to reflect what is happening on the ground but seemingly intending to create, on the ground, C to westfig.7 rather than include in the application the actual on the ground position of dog-leg corner to the north of C to exit onto U8018 where it does now across the existing railway sleeper bridge just by the south west corner of Lake House garden?

f) The argument of the applicants must not be read as if the path across Water Cottage curtilage follows the line B to C on the plan. It does not and has not for longer than I have been using it. (See 3a).

**Number 2:** This test fails and is complicated for two reasons:

a) The proposed exit at point C is south of the existing exit stile requiring cutting a hole through a splendid beech hedge. It facilitates an unnecessary stile removal but, I understand, a stile is now a non-preferred border crossing tool of the Council. An illustration of such 'non-preference' occurred earlier in 2015 when the stile at east fig.7 was removed requiring the public to use the adjacent field gate instead. A perilous undertaking when cattle are grazing in the field! Animal occupation of the field was the reason for installing the stile in the first place. A 'regulation' stile has always been the Water Cottage exit at the dog-leg corner to the north of C on the plan. This stile was thoughtfully built with an additional specially designed dog pass as a public aid. The cost of removing a perfectly serviceable stile benefits nobody.

b) SCC wishes to reinstate the definitive line (by stating it is "unaffected" [untrue as stated at "Number 1"] on the plan) between C and fig.7 to the west, on the quiet. This will seriously inconvenience the public and pose quite a danger. It presupposes that all the obstructions can be successfully removed by SCC including ensuring that, in creating the path on this line all the roots of the trees that need removing can be successfully extracted so as not to leave trip hazards. The need to be so thorough will undermine the integrity of the land to be walked on and will undermine the integrity of the bank of the immediately adjacent gully that is the outflow facility for

Rushbrooke Lake. Footpath foundation problems are guaranteed by such a change although it is stated as “unaffected”.

**Number 3:** This test fails because:

a) It removes from the public the direct line (as has been the practice on the ground for at least 30 years and is best read, in the absence of a helpful plan from the Council, as D to the dog leg corner just north of C on the plan provided then effectively straight on adjacent to and south of the fence to west fig.7 which is actually a little further north than shown on the plan). The extra distance for the public to walk is therefore greater than indicated by any calculation from the lines on the application plan.

In removing the direct line the public, traveling D to near C in the Water Cottage curtilage will lose the splendid valley view towards Rushbrooke Lake and the very easy unobstructed walking (well sign posted by SCC) across well mown grassland. The current line on the ground here is the best feature of the whole path between road U8015 and road U8018. Replacing the current line for a trudge around a featureless garden boundary is definitely detrimental to public enjoyment. Any vistas that might be afforded between F and C across the valley will be obscured by the mixed plant variety hedge line, around 6 feet in height at the time of writing and not shown on the plan but runs roughly north east from the dog-leg corner to approximately half way to the Water Cottage driveway where it then dog-legs north to stop about 5 meters short of the driveway. This hedge was well established before I started using the path.

One of the joys of the Rights of Way network is the discovery of hidden gems. The current path line that exposes Water Cottage for the public is one of these gems. Moving the line will take the enjoyment away forever!

b) The demerits of forcing on the public the never used line C to west fig.7 have been covered in Number 1 and 2 above and again in Number 4 below.

**Number 4:** This test fails as the public enjoyment is much reduced. From the west:

a) Between points 7 and C because reverting to the definitive map line the path will be moved into a forest of old trees, a debris strewn chest high stinging nettle invested mini forest floor. The line passes so close to the Rushbrooke Lake overflow gully, that is 2½ to 3 feet deep, that the likelihood of someone falling in is very high indeed. Furthermore, in winter the ground along the whole of this part is very wet and muddy indeed. The current line on the other hand is always firm and dry – summer and winter. In winter where the lake outflow crosses Eastlowhill Road the volume of water can be such (for several days at a time) that the road is underwater rather than over the water!

Taking the public close to the Rushbrooke Lake sluice is another danger to consider.

b) Between C via F and E to D the public will be forced to walk further but for what? There is no advantage to the public for this, the proposal by the residents of Water Cottage. In addition, if all the hedging and trees, that currently form an impenetrable barrier at the moment to access this line are not thoroughly removed, roots and all; but perhaps, just cut back to accommodate the required path width instead, especially

between C and F and on to the Water Cottage access driveway, then permanent maintenance for side growth is going to be required. Such maintenance will also be required for any hedging added to the Lake House side of the boundary fence where the residents may wish to protect more strongly than now any privacy that they may feel they lose as a result of a sanctioned change. The leylandii between E and D will need thorough removal (roots and all) to ensure again the avoidance of tripping accidents.

c) Between points D and A is SCC 'righting' the definitive map 'wrong' and 'adjusting' it to what has 'always' been the position on the ground and helpful avoidance, by dint of the application by SCC from the residents of Water Cottage, of the requirement to apply for a correction under the Wildlife and Countryside Act 1981. (This of course is similar but in reverse of the action proposed to be taken at a) but without being honest and officially righting the wrong first and rendering the 'on the ground' west fig.7 to near C alteration unnecessary.)

Having said that, the ditch crossing at point B, has been neglected for so long (if it ever was actually there in the first place) that to reinstate it would mean demolishing an established building (not shown on the plan) on the southern side of the ditch.

In conclusion of Number 4:

The public will lose the views across the valley of Rushbrooke Lake as already mentioned; will lose the views of a very quintessential Suffolk thatched cottage – Water Cottage and will lose the direct, very pleasant walking, line between D and the dog-leg corner just north of C that they have enjoyed since time immemorial. Unfortunately, for the residents, Water Cottage is a very photogenic building but perhaps such charm is part of the reason why they purchased it. However, it is surely not a reason to impose a sudden and perpetual enjoyment denial onto the public. The current residents will not be there forever but the path line on the ground has existed for many years prior to their arrival and hopefully will remain in the same position for many years after they leave. They of course knew of the existence of the line of the Right of Way, as clearly evident on the ground, when they viewed then proceeded to purchase Water Cottage in 2014. The disclosure that the line on the ground differed to that on the definitive map only came to light when the residents applied to re-route that part of the path that traverses Water Cottage garden earlier this year presumably, having decided that couldn't live with the path across their land. The complications as a result of the application are very unfortunate indeed for the Council, the public and the land owners.

