

Extraordinary Licensing and Regulatory Committee



St Edmundsbury
BOROUGH COUNCIL

Title:	Agenda																										
Date:	Thursday 28 March 2019																										
Time:	5.00 pm																										
Venue:	Conference Chamber West (F1R09) West Suffolk House Western Way Bury St Edmunds, IP33 3YU																										
Full Members:	<p style="text-align: center;">Chairman Vacancy</p> <p style="text-align: center;">Vice-Chairman in the chair Clive Springett</p> <p><u>Conservative Members (11)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Sarah Broughton</td> <td style="width: 33%;">Margaret Marks</td> <td style="width: 33%;"></td> </tr> <tr> <td>Mike Chester</td> <td>Richard Rout</td> <td></td> </tr> <tr> <td>Mary Evans</td> <td>Clive Springett</td> <td></td> </tr> <tr> <td>Susan Glossop</td> <td>Peter Thompson</td> <td></td> </tr> <tr> <td>Wayne Hailstone</td> <td>Vacancy</td> <td></td> </tr> <tr> <td>Beccy Hopfensperger</td> <td></td> <td></td> </tr> </table> <p><u>Charter Group Member (1)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Diane Hind</td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> </table> <p><u>Haverhill Indys Group (1)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">John Burns</td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> </table>			Sarah Broughton	Margaret Marks		Mike Chester	Richard Rout		Mary Evans	Clive Springett		Susan Glossop	Peter Thompson		Wayne Hailstone	Vacancy		Beccy Hopfensperger			Diane Hind			John Burns		
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Diane Hind																											
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Substitutes:	<p><u>Conservative Members (4)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Ian Houlder</td> <td style="width: 33%;">Patricia Warby</td> <td style="width: 33%;"></td> </tr> <tr> <td>Elaine McManus</td> <td>Vacancy</td> <td></td> </tr> </table> <p><u>Charter Group Member (1)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">David Nettleton</td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> </table> <p><u>Haverhill Indys Group (1)</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Tony Brown</td> <td style="width: 33%;"></td> <td style="width: 33%;"></td> </tr> </table>			Ian Houlder	Patricia Warby		Elaine McManus	Vacancy		David Nettleton			Tony Brown														
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Interests – Declaration and Restriction on Participation:	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.																										

Quorum:	Five Members
Committee administrator:	Christine Brain Democratic Services Officer (Scrutiny) Tel: 01638 719729 Email: christine.brain@westsuffolk.gov.uk

Public Information



St Edmundsbury
BOROUGH COUNCIL

Venue:	West Suffolk House Western Way Bury St Edmunds Suffolk IP33 3YU	Tel: 01284 757120 Email: democratic.services@westsuffolk.gov.uk Web: www.stedmundsbury.gov.uk
Access to agenda and reports before the meeting:	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.	
Attendance at meetings:	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.	
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 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. A person who wishes to speak must register at least 15 minutes before the time 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.	
Disabled access:	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. Visitor parking is at the car park at the front of the building and there are a number of accessible spaces.	
Induction loop:	An Induction loop is available for meetings held in the Conference Chamber.	
Recording of meetings:	The Council may record this meeting and permits members of the public and media to record or broadcast it as well (when the media and public are not lawfully excluded). Any member of the public who attends a meeting and objects to being filmed should advise the Committee Administrator who will instruct that they are not included in the filming.	
Personal Information	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: https://www.westsuffolk.gov.uk/Council/Data_and_information/howweuseinformation.cfm or call Customer Services: 01284 763233 and ask to speak to the Data Protection Officer.	

Agenda

Procedural Matters

Part 1 - Public

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. Highways Act 1980 Section 119 - Application to Divert Part of Rougham Public Footpath No: 7 **1 - 26**

Report No: **LIC/SE/19/003**

Part 2 – Exempt

NONE

Extraordinary Licensing and Regulatory Committee



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Highways Act 1980 Section 119 - Application to Divert Part of Rougham Public Footpath No 7	
Report No:	LIC/SE/19/003	
Report to and date:	Extraordinary Licensing and Regulatory Committee	28 March 2019
Portfolio holder:	Councillor Peter Stevens Portfolio Holder for Operations Tel: 01787 280284 Email: peter.stevens@stedsbc.gov.uk	
Lead officers:	<p>Cheryl Froud Job Title: Highways Officer Tel: 01284 757319 Email: Cheryl.froud@westsuffolk.gov.uk</p> <p>Darren Dixon Job Title: Service Manager, Property Tel: 01284 757678 Email: darren.dixon@westsuffolk.gov.uk</p>	
Purpose of report:	<p>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.</p> <p>A location map and images are attached at Appendix 2.</p>	

Recommendation:	Extraordinary Licensing and Regulatory Committee It is <u>RECOMMENDED</u> that, Councillors (1) Consider the application for diversion of a footpath; and (2) Give authority to make an Order		
Key Decision: <i>(Check the appropriate box and delete all those that do not apply.)</i>	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/>		
Consultation:	<ul style="list-style-type: none"> See paragraph 4 		
Alternative option(s):	<ul style="list-style-type: none"> 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. 		
Implications:			
Are there any financial implications? <i>If yes, please give details</i>		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> See paragraph 7 	
Are there any staffing implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Are there any ICT implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Are there any legal and/or policy implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Are there any equality implications? <i>If yes, please give details</i>		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
	Low/Medium/ High*		Low/Medium/ High*
Covered in the Report			
Ward(s) affected:		Rougham	

Background papers:	Licensing and Regulatory Committee Report – 29 January 2019, Report No: LIC.SE.19.001
Documents attached:	Appendix 1 – Proposal map Appendix 2 – Location map Appendix 3 – Applicants’ statement of reasons for requesting the order 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.

1.5 The Licencing and Regulatory Committee considered this application at its meeting on Tuesday 29 January 2019. It was resolved that the application be deferred to allow Officers to arrange a site visit for Members of the Committee.

1.6 The site visit was undertaken on Monday 11 March 2019 and was attended by Councillors Mike Chester, David Nettleton, Clive Springett and Patricia Warby. Also in attendance were Councillor Karen Soons (SCC), Public Right of Way Manager for SCC, Communities Officer (Public Rights of Way), Highways Officer and Services Manager, Property for St Edmundsbury Borough Council.

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 alerted 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 2006-2016.

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.

4.2 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

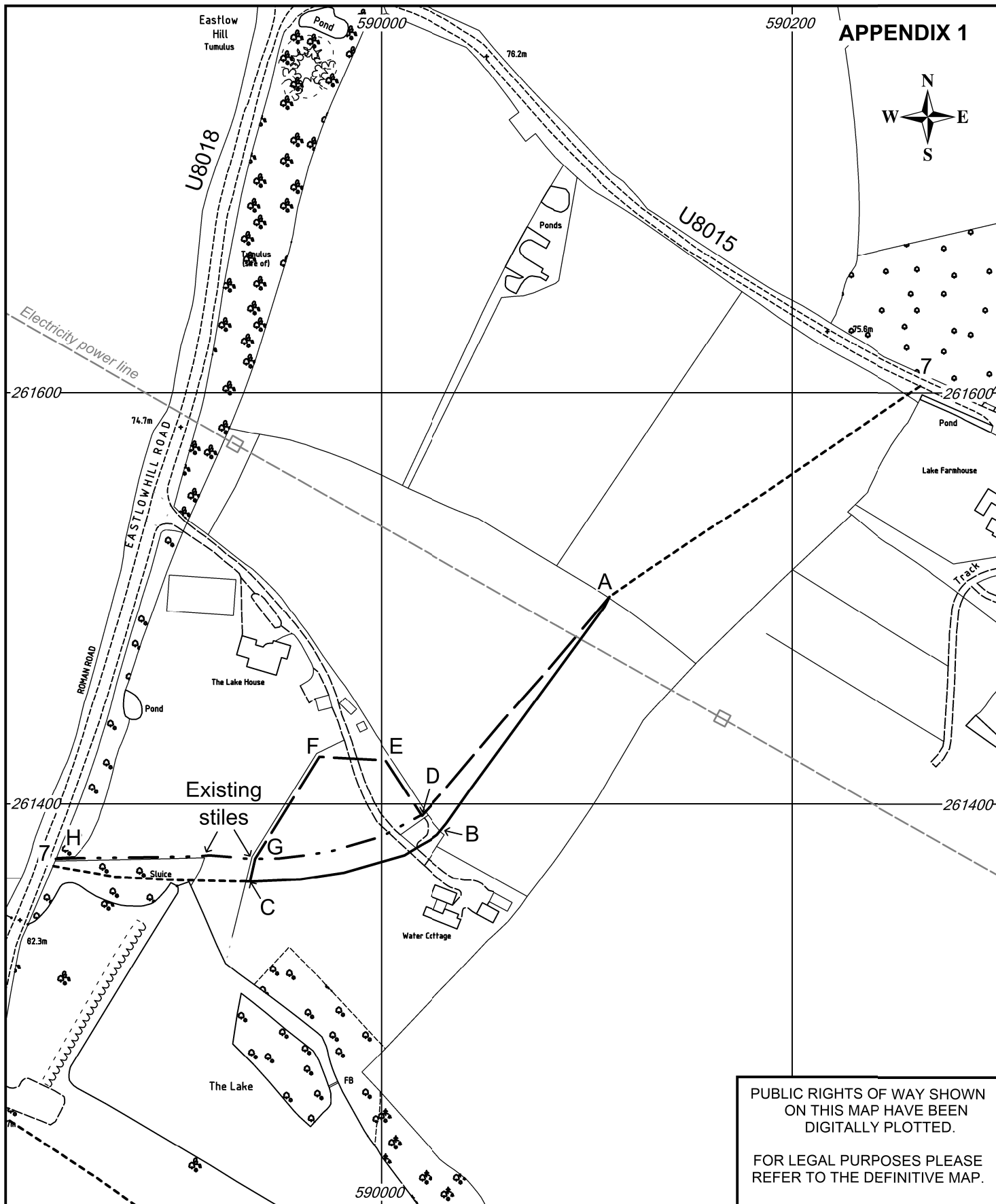
- 7.1 Some of the costs of the specialist advice required to assess the application will be recovered from the applicants. They have agreed to pay £1,500 at the start of the process, which was the Borough Council’s standard charge

for public path order administration at the time. In addition to the £1,500, 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 £4,098.29.

- 7.2 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. The applicants have indicated they are prepared to contribute up to £500 to make the order in addition to the SCC contribution of £300.
- 7.3 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 £1,000 up to £5,000. However, the applicants have also indicated their willingness to contribute £1,000 towards to cost of making written representation.

8. Conclusion

- 8.1 There has been no material change to the issues raised in this Paper since Members last considered the item at the Committee meeting on 29 January 2019.
- 8.2 As previously stated, 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.
- 8.3 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.



PUBLIC RIGHTS OF WAY SHOWN ON THIS MAP HAVE BEEN DIGITALLY PLOTTED.

FOR LEGAL PURPOSES PLEASE REFER TO THE DEFINITIVE MAP.

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



- Footpath to be diverted (A - B - C)
- Proposed Footpath (A - D - E - F - G - C)
- Line of walked route coincident with proposed route (A - D)
- Approximate line of walked route (D - G - H)
- Unaffected Footpath

Scale 1:2500 @ A4

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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
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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 27th 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 22nd 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 21st 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 22nd 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 loose 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 loose the views across the valley of Rushbrooke Lake as already mentioned; will loose the views of a very quintessential Suffolk thatched cottage – Water Cottage and will loose 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.

