

**HERTFORDSHIRE COUNTY COUNCIL
DEVELOPMENT CONTROL COMMITTEE
TUESDAY 12 SEPTEMBER 2000 AT 10.30**

Agenda Item No:

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**APPLICATION FOR A MODIFICATION ORDER TO RECORD A
SECTION OF FOOTPATH ALDENHAM 31A AT COMMON LANE,
LETCHMORE HEATH ON THE DEFINITIVE MAP AND STATEMENT OF
PUBLIC RIGHTS OF WAY IN HERTFORDSHIRE.**

Local member: A. Kilkerr,

Report of the Director of Environment

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1 Purpose of Report

To provide information regarding a rights of way issue. Members are asked to decide if exceptional circumstances exist which allow this application for a Modification Order to be investigated out of date order.

2 Summary

- 2.1 The location of Footpath Aldenham 31a (FP31a) is shown in Appendix 1. It connects with Common Lane (a single track sunken lane) in the west, and Watling Street in the east. The section causing concern is the first 100 metres at the western end between points A-D as shown on Appendix 2. The number of complaints received by the County Council suggests that this path is well used. It is also part of the route described in the publication 'The Hertfordshire Way'.
- 2.2 The First Definitive Map (sealed in 1968) shows a section of path joining Common Lane at the north-west corner of the allotment gardens (Point A on Appendix 2) where FP31a is at the same level as Common Lane; whereas subsequent Definitive Maps show the path abutting Common Lane at the north-east corner of the allotment gardens (Point B on Appendix 2) where there is an almost vertical drop of at least 2 metres. The section between points A and B is not shown on the current Definitive Map and there is no record of a legal order for this change.

- 2.3 The section of path between Common Lane and the Fruit Farm between points A and D (Appendix 2), has already generated significant controversy including threat of judicial review by landowners, formal complaints to the Director of the Environment and to the Ombudsman, and threats to public order.
- 2.4 The owner of Common Lane Farm has requested a diversion for the section of this path between points C and D (Appendix 2). It was agreed in mid 1999 by HCC that their solicitors could be appointed as Hertfordshire County Council's agents and, subject to our approval of their proposals, carry out the work.
- 2.5 A Modification Order application has been received requesting that a Footpath be recorded on the Definitive Map and Statement between points A and B (Appendix 2).
- 2.6 Due to the scale of the map and the thickness of the lines used to depict rights of way, the western end of FP31a as currently shown appears to abut Common Lane. However, at point B (Appendix 2) there is an almost vertical drop of at least 2 metres (7 feet), and there does not appear to be any evidence that this route has ever been used.
- 2.7 Whilst awaiting the outcome of the Modification Order application, users are asking that the County Council construct steps in the embankment at this point to enable access out onto Common Lane.
- 2.8 A safety audit carried out considers that the construction of these steps would create an access onto Common Lane which is unsafe. In any case, they would become redundant if a Modification Order for a footpath along the Drive was made and confirmed.

3 Conclusion

The Committee are asked to determine if the combination of a probable transcription error, the importance of the path to the public, public safety issues and concern over public order are exceptional circumstances which allow this application to be investigated as a priority.

4 History behind the making of the Definitive Map

- 4.1 Following the National Parks and Access to the Countryside Act 1949 the Rights of Way in the Parish of Aldenham were surveyed. The paths shown on the Parish survey map included a Footpath, then labelled Aldenham 31, running between points A and B (Appendix 2).
- 4.2 The draft Map and Statement were then produced, and advertised to allow anyone to comment on it. However, no comments or objections about this footpath, were received.
- 4.3 The First Definitive Map (sealed in 1968) clearly shows a footpath running along the northwest side of the Allotment Gardens i.e. the Drive (Appendix 3). The statement however, reads “Commences from Common Lane at N.E. corner of Allotment gardens thence N.E. across F.P.7....”. There appears to be a clear contradiction between what is shown on the Definitive Map and the wording of the Statement.
- 4.4 Any Right of Way shown on the Definitive Map cannot be altered without a legal order diverting, stopping up, or modifying it. There is no record of a legal order for this change.
- 4.5 The next edition of the Definitive Map was produced for the Special Review in 1984 (Appendix 4). Part of the eastern end of Aldenham 31 had been diverted, and the number at the western end of the path leading to Common Lane was altered to read “31a”. However, it would appear that at this time there was a transcription error, and the section between points A and B (Appendix 2) was omitted; an error which has been reproduced on the subsequent Definitive Maps. The accompanying statement was also amended slightly with “N.E. corner” being replaced by “N tip” so it now reads “Commences from Common Lane at N tip of allotment gardens thence NE across FP7...”

5 The Problem

- 5.1 In July 1993, the Rights of Way Unit received a complaint that a padlocked gate had been put up by the owner of The Cottage at the western end of this path, where it joins Common Lane (near Point A on Appendix 2). Since 1998 Hertfordshire County Council has received complaints from various societies and members of the public that they have been prevented from using the section between points A and B (Appendix 2) as well as other sections of FP31a. More recently, an individual has alleged assault by this landowner.

6 The request for a diversion on part of the remainder of Aldenham 31a

- 6.1 From our records it would appear that the previous occupant of Common Lane Farm, extended his garden between points C and D (Appendix 2) sometime before 1993. In January 1993, he approached Hertsmere Borough Council for a diversion of the footpath. (At that time, Hertsmere Borough Council had delegated powers to make Orders under the Highways Act 1980, but these have since been returned to Hertfordshire County Council). The Radlett Society was consulted at that time, and agreed “that a ‘Permissive’ alternative, well and clearly marked – and perhaps with explanatory notice at each end – for several years, would lead to acceptance”. So walkers were then still able to walk the line of the right of way if they so wished, but the permissive route (shown marked on Appendix 2) was also provided. The current owner of Common Lane Farm has asked Hertfordshire County Council for a diversion of the right of way onto this alternative route.
- 6.2 In mid 1999 following Counsels advice, it was agreed that the owner of Common Lane Farm could appoint his solicitors as Hertfordshire County Council’s agents and, subject to our approval of their proposals, carry out the work necessary to make an order for a diversion. A diversion running across both Common Lane Farm and The Cottage between points B and D (Appendix 2) has been suggested. The County Council asked that, as part of the proposed diversion package, the owner of The Cottage dedicate the section between points A and B (Appendix 2). In July 2000, he offered a permissive footpath link. This is not acceptable to the County Council, as the route would not be recorded on the Definitive Map, and the landowner would still be able to prevent walkers from using the path.

7 The request for the County Council to make a Modification Order

- 7.1 An application has been made for a Modification Order to record as Footpath the section between points A and B (Appendix 2), as shown on the first Definitive Map, and which has been omitted from subsequent maps. This application was made on March 31st 1999 and completed on June 17th 2000.
- 7.2 The County Council Statement of Priorities states that Modification Order applications will be dealt with in date order, unless there are exceptional circumstances. Due to the number of applications awaiting investigation, it would be at least another 8 years before this application was investigated.
- 7.3 The County Council’s draft Standards Manual currently being piloted, has been produced to ensure a consistent approach to Rights of Way work, and to manage the workload. Guidance from Independent Research Services indicated that criteria should be developed in order to prioritise work, and suggests these should be in relation to:-

- The importance of path to the public
- Public safety
- Best value in the use of resources

8 The request for Steps

- 8.1 The Definitive Map is produced using an Ordnance Survey map at a scale of 1:10,000, and then drawing on different lines styles to depict the various types of Rights of Way. In this case, due to the scale of the base map and the thickness of the line used to depict the footpaths, FP31a appears to abut Common Lane at the north-east corner of the Allotment Gardens at point B (Appendix 2). On site however there is an almost vertical drop of at least 2 metres (7 feet), which is a route that appears never to have been used.
- 8.2 The County Council has received requests for steps to be constructed in the embankment at point B (Appendix 2) to enable the path to be used during the intervening years whilst awaiting until the Modification Order application is investigated. If steps were constructed, they would at best be redundant if a Modification Order to record a footpath between points A and B (Appendix 2) was made and confirmed. This would not be an effective use of resources.
- 8.3 A safety audit, carried out by Mouchel in March 1999, commented on various things such as the difficulty less able bodied pedestrians would have in using the necessarily steep steps, and the dangers of pedestrians falling off these steps onto the busy lane. A recent site visit demonstrated the level of vehicular use of Common Lane, with a constant flow of traffic averaging about 3 cars/minute. In any event, the Safety Report found that “although the provision of steps is feasible, there are numerous safety disbenefits.”

9 Usage of the section between points A and B

- 9.1 In recent years, the County Council has received complaints from the Parish Council, the Radlett Society, The Civic Society, The Open Spaces Society and the Ramblers Association on behalf of their members regarding problems encountered when their members have tried to use this path.
- 9.2 The path will also be used by walkers from further afield, as it has been described in a publication produced by the Friends of the HertfordshireWay called ‘the Hertfordshire Way’. This is a long distance footpath forming a circular route around Hertfordshire.

10 Analysis

The Committee is asked to decide if the combination of:-

- A probable transcription error
- The importance of this path to local people showing a need for this missing link
- Public safety issues and concern over public order are exceptional circumstances which would justify the early investigation of this Modification Order application.

11 Financial Implications

The County Council has a duty under s53 of the Wildlife and Countryside Act 1981 to investigate this application. The Rights of Way Unit has budgeted for the investigation of up to 20 Modification Order applications in this financial year. If the application for Aldenham 31a is investigated out of date order, then it will be included as one of these 20 applications. One application due to be investigated in date order will be displaced, and investigated next year. The typical cost of processing a Modification Order through to confirmation including Public Inquiry is estimated to be £9,000. Most of this is accounted for by staff and legal costs.

Background information Used by the author when compiling this report

Safety Report Mouchel 1999
Highways Act 1980 s116
Wildlife and Countryside Act 1981 s53