

Proposed Extinguishment of Public Footpath No. 15 (part) (Cannock Road to Cobbett Road) in the Parish of Burntwood



Date: 13 December 2023
Agenda Item:
Contact Officer: Rhiannon Godley/Robin Carr
Tel Number: 01543 308254/07976 624029
Email: Rhiannon.Godley@lichfielddc.gov.uk
robin.carr1@btinternet.com
Key Decision? NO
Local Ward Members: Councillors D Ennis, L Ennis, Norman and Woodward

REGULATORY AND LICENSING COMMITTEE

1. Executive Summary

- 1.1 To consider an application from Mr Andrew Richard Ludgate of ARL Design and Welding Limited for the extinguishment of that part Public Footpath No. 15 that runs between Cannock Road and Cobbett Road in the Parish of Burntwood and shown by a solid black line (A-B) (the Application Route) on Appendix 1 attached to this report. The application is to be considered under the Highways Act 1980, Section 118.

2. Recommendations

- 2.1 To approve the making of an Order to extinguish that part Public Footpath No. 15 that runs between Cannock Road and Cobbett Road in the Parish of Burntwood and shown by a solid black line (A-B) on Appendix 1 attached to this report.
- 2.2 In the event of objections being duly lodged, and not subsequently withdrawn, the Order be referred to the Secretary of State (via the Planning Inspectorate) for confirmation.
- 2.3 That if no objections are received, or any received are subsequently withdrawn, the Authority confirm the Order itself.

3. Background

- 3.1 Public Footpath, Burntwood No 15 is recorded on the Definitive Map and Statement for the area but has been overgrown and obstructed for a number of years.
- 3.2 In March 2023 the Council received an application from Mr Andrew Richard Ludgate of ARL Design and Welding Limited ARL Design and Welding Limited, Unit 20, Burntwood Business Park Zone 1, Cobbett Road, Burntwood, Staffordshire, WS7 3GL to stop up that part of Public Footpath No 15 that is shown by a solid black line (A-B) (the Application Route) on Plan 1 attached to this report.
- 3.3 The application was originally submitted under the provisions of Section 257 of the Town and Country Planning Act 1990, and in connection with planning application 20/01826/FUL. The planning consent allows for the construction of a new 2500 square foot industrial unit to side of the existing Unit No 20. It was however considered that the extinguishment of the footpath was not necessary to enable the approved development to take place. As a result, the application under the Town and Country Planning Act 1990 would fail. The application is therefore to be considered und Section 118 of the Highways Act 1980 instead.

- 3.4 Section 118 of the Highways Act 1980 allows the Authority to promote a Public Path Extinguishment Order if it considers that a path is not needed for public use. Before such an Order is confirmed consideration must be given to the amount of use the footpath would receive if it remained open. These matters must be considered on basis that the footpath in question is open and available for use. In other words, any temporary obstructions must be disregarded.

4. Discussion

- 4.1 Any consideration of an application to extinguish a public right of way must be made as if the path were fully open and available for use. The fact that a path may be obstructed and impassable, as in this case, must be disregarded during the decision-making process.
- 4.2 Before the Authority can make a Public Path Extinguishment Order it must be satisfied that the path in question is not needed for public use. In this particular case Members of the Committee may consider that the Application Route is not needed because there are suitable, and possibly better, alternative routes provided by Cobbett Road and Attwood Road, both of which provide access to Cannock Road. This may be particularly the case when there are very few destinations where the Application Route would provide a more convenient or shorter route.
- 4.3 Members of the Committee may however consider that it is preferable to have a traffic free pedestrian route between Cobbett Road and Cannock Road, in which case the Application Route might be considered to be needed.
- 4.4 If members of the Committee are satisfied that the Application Route is not needed, an Order can be made, but it cannot be confirmed (come into effect) without first consideration being given to the likely use that Application Route would receive if it wasn't stopped up (under such circumstances all obstructions etc would have to be removed).
- 4.5 Given the location of the Application Route, it is likely that, if opened up it would be enclosed on both sides by high security fencing, without the benefit of street lighting, or any escape routes for users should they feel vulnerable or threatened. It would not necessarily be a pleasant path to use and it would not be unreasonable to conclude that it is unlikely that it would receive any substantial amount of use. This is especially so when both Attwood Road and Cobbett Road provide better, more open and in many instances more convenient alternative routes.
- 4.6 Whilst no local objections have been received, the Ramblers and the Peak and Northern Footpath Society have indicated that they would object if the requested Order were made. Both sets of objections are currently against the principle of closing footpaths. This might not be considered a valid objection because Parliament has specifically legislated to allow for the extinguishment of public rights of way subject to certain conditions being met. Other points raised relate to how, or whether, the legislative tests can be objectively considered when the footpath is obstructed. The legislative tests are somewhat subjective; however, they must be considered as if the path were open and available for use. There is no requirement for the path to be opened up. It should be further stressed that proposals of this nature must be considered on a case-by-case basis, and on the facts of that case. Agreeing to the closure of one footpath, does not set any future precedent for agreeing future applications.
- 4.7 It is the opinion of Officers that the legislative criteria of Section 118 of the Highways Act 1980 can be met in this particular case, and that an Order should be made. In the event of objections being received, and not subsequently withdrawn, the order should be referred to the Secretary of State with a request that it be confirmed.

4.8 In conclusion, whilst it is for Members of the Committee to make their own decision whether or not the legislative tests have been met, it would not be unreasonable to conclude that they have, and that the requested Order be made.

Alternative Options	<ol style="list-style-type: none"> 1 Refuse the Application and leave the footpath in its current location, which would mean the County Council having to undertake its statutory duties to ensure that the footpath is fully opened up and all obstructions etc removed (by enforcement action if necessary)
Consultation	<ol style="list-style-type: none"> 1 Pre-Order consultations have been undertaken in keeping with codes of practice on consultation. This includes consulting local user interest groups etc. Indications of objections were received from the Ramblers and the Peak & Northern Footpaths Society, both of which are generally opposed to the principle of footpath closures. The Peak & Northern Footpaths Society have since withdrawn their objection. 2 Staffordshire County Council, Burntwood Town Council and the Local Ward Members have been consulted. No objections have been received in response to this. 3 In addition to the above, an informal consultation notice has been put on site to consult the public. No objections have been received in response to this.
Financial Implications	<ol style="list-style-type: none"> 1. Subject to the Order being unopposed, no financial implications for the Council have been identified subject to the Order. Administrative and advertisement cost that will be incurred in the making of the Public Footpath Order will be met by the applicant. 2. In the event of the Order being opposed the Authority will be expected to defend the Order either at a local public inquiry, a hearing or using a written representation procedure. In each instance all parties are expected to pay their own costs.
Approved by Section 151 Officer	Yes
Legal Implications	<ol style="list-style-type: none"> 1. The Highways Act 1980 provides the Council with the powers to make Public Path Extinguishment Orders. 2. In the event of objections being duly lodged against the Order, the Authority has the option of abandoning the Order or referring it to the Secretary of State (via the Planning Inspectorate) for determination. 3. If the requested Order is successful, the public's right to use the route will be irrevocably lost.
Approved by Monitoring Officer	Yes
Contribution to the Delivery of the Strategic Plan	<ol style="list-style-type: none"> 1. N.A.

Equality, Diversity and Human Rights Implications	1. None identified
EIA logged by Equalities Officer	None
Crime & Safety Issues	1. Whilst not a matter that can be taken into account as part of the decision-making process, if the path were to be opened up it would be enclosed on both sides by high security fencing, without the benefit of street lighting, or any escape routes for users should they feel vulnerable or threatened. It would be a path of a nature which may attract anti-social behaviour.
Data assessment	N/A
Environmental Impact (including Climate Change and Biodiversity).	1. The legislation requires that consideration be given to the interests of agriculture, forestry and biodiversity. It would also be expedient to consider whether any land or property is served by the footpath. There are no matters arising from such considerations.
GDPR / Privacy Impact Assessment	1. Not applicable

	Risk Description & Risk Owner	Original Score (RYG)	How We Manage It	Current Score (RYG)
A	Footpath extinguishment process not followed correctly and being challenged.	Green	We have an agreed process which follows the relevant legislation and also legal advice if required	Green
B				
C				
D				
E				

	Background documents Appendix 1 - Proposed Extinguishment of Public Footpath No 15 (part) Burntwood Parish
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	Relevant web links
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