

Public Footpath 65 (Ilkley) at Burley Woodhead School.

The school made an application to the Council on 4th May 2016 to close the public footpath through the school grounds, to facilitate a safer environment as the existence of the public footpath means that the perimeter cannot be secured at any time.

In considering this application, the Rights of Way Section have looked at all possible legal mechanisms that could achieve the desire to secure the school but have to also balance this against the rights that the public footpath users currently enjoy and how that might change.

We have also carried out an informal consultation to ask local people about how they use the footpath currently and for their suggestions to help to secure the site. This report will summarise our response to those suggestions and comments.

Consultation responses.

This informal consultation attracted a very large volume of responses, over 100 were received. Support and opposition were fairly evenly split, with some of the support conditional or at least requesting a compromise of a part time closure and/or continued access to the playing areas.

As well as the notices the Council put on site, further letters from an interested party were also distributed locally and letters were sent into the local press. It is fair to say there is considerable local interest in this matter and most people put forward very reasoned and cogent opinions on both sides of the matter.

Background.

The consultation raised a number of questions we will try and answer but also highlighted some misconceptions about the current situation which it may be useful to clarify.

The public footpath pre-dates the school, the school was built in the early 1970's and since then the footpath has run through the grounds.

Checking back through some of our older records we came across two legal orders that were made; one in October 1976 and another in August 1979 which sought to divert the public footpath to the edge of the field. The first order failed as it was incorrectly made using the Town and Country Planning Act 1971 and the second, whilst made under different legislation, namely the Highways Act 1959, appears not to have been confirmed (i.e. it was not finished) and we have no direct information as to why it was not confirmed. Both of the Acts have since been updated (in 1991 and 1980 respectively) The Definitive Map was republished with a relevant date of 1985 and it seems that this unfinished Order did not make it onto the new Map, thus it remains on its original line.

This discovery shows that the Council had attempted to divert the footpath historically, so we can say that the footpath was not intended to remain on its original line when the school

was built. But as we cannot say for certain why the second Order was not confirmed, that is all we can conclude. That Order is no longer capable of being confirmed.

One of the consequences of the presence of the public footpath is that people have had access to the wider school premises and have for many years enjoyed being able to play on the field and use the equipment provided by the school for their pupils. Whilst it seems there was a general implied permission to do so, this has to be framed by the fact that the school were powerless to prevent it due to access always being open via the public footpath.

Another aspect to the public footpath here is that not everyone appreciates where it actually is. The legal line of the public footpath starts on Sandholme Drive and then runs more or less in a diagonal line across the play area and field to the far corner of the field, near to where it exits the grounds through a gate. The legal line of the public footpath does not follow the surfaced route which skirts the pond. This route was provided a few years ago to make a better route for children coming into the school from the other side of the estate to try and reduce congestion at the school gate and reduce parking issues around Heather Close and Peaseborough Close. It was not intended for public use per se. This route is not shown on the Council's records as a public right of way.

Strictly speaking then, if we consider any alternatives to the public footpath, what we mean are alternatives to the route across the field, not the surfaced route.

However, it would be disingenuous to disregard the fact that there has been de facto use of this route and it is probably used in preference to the legal line of the footpath by the vast majority of users over the last few years.

Enclosed is a copy of the 'Public Consultation' plan, this shows the legal line of the public footpath as a solid black line, the surfaced but unrecorded path can be seen to the south of this line. Possible diversions to the perimeter are also marked and labelled. A nearby footpath which runs parallel to Jumb Beck Close can also be seen marked with a solid black line.

Legal and practical options.

Fencing the public footpath was suggested – however, as this would require the definitive line (not the surfaced route) to be fenced this would effectively bisect the playing field. This is not a practical option and would severely hamper the use of the area as well as being very expensive.

A few respondents suggested using gating orders; these no longer exist as they were absorbed into another legal power – Public Space Protection Orders. These are meant to be used to target specific behaviours, such as public drinking, and on the advice of the Council's Legal team we have been told this situation is not an appropriate use of these powers.

Quite a few people suggested a part-time closure. We have investigated whether it is possible to apply a Traffic Regulation Order to a public footpath in this situation.

To paraphrase the advice from our legal department as follows:

It is possible to make a TRO in relation to a footpath, as long as it for one of the stated reasons listed in s1(1) a-g of the Road Traffic Regulation Act 1984.

In this case, it is difficult to see which of those options could be considered appropriate in this instance and capable of resisting potential legal challenge.

Appended is an extract from the Road Traffic Regulation Act 1984 and the General notes to the section which give a simpler explanation of what is envisaged by each of the six reasons.

The cost of a TRO is around £7000 for the legal work and advertising and the outcome of the process is not guaranteed as there is a need to advertise the proposals. There is the right of objection and those objections have to be considered and if they remain unresolved they go before the Area Committee.

Next comes the issue of enforcement of any restriction imposed by the TRO. Who is going to enforce this TRO? It cannot be enforced by the school itself e.g. the caretaker. This would be a Prohibition of Access which can only be enforced by the Police. Next there is the issue of signage; an authority can only use prescribed signs in relation to a restriction imposed by a TRO. It is unlikely that there will be a prescribed sign for this on/off "closure" and so the consent of the SOS would be required to create and use a non-prescribed sign.

Finally, the most pertinent question is would such an on-off closure resolve the issues? Would the persons causing the nuisances on site respect a notice telling them not to, or is it more likely that this would have the effect of discouraging people who would otherwise cause no harm and perhaps contribute a natural surveillance whilst walking through?

There is specific provision made in s118B of the Highways Act to deal with the diversion and closure of public footpaths and it would perhaps be more appropriate to use this method to effect the necessary restrictions on access to the school

Part time closures would also be difficult to communicate to the wider public and could cause inconvenience to casual users unaware of the local restrictions.

A more usual way to divert or close public footpaths are to use the mechanisms within either the Town or Country Planning Act (where affected by development) or in all other situations the Highways Act 1980.

As this public footpath runs over school grounds, this opens the possibility of using a power specific to this location. Section 118B of the Highways Act is the relevant section. This has different criteria for both making and confirming an Order to the other powers more commonly used. It can be used to divert or close a public right of way, but only on school

grounds. The Council appreciates that the public have used and enjoyed the present route of the public footpath for many years, some before the school was constructed and the majority of users present no threat or concern for the school.

However the benefits to the public must be weighed against the need for security at the school and that of its staff and pupils and therefore we have also considered if a diversion would offer a more equitable solution.

An extract of the Highways Act 1980, Section 118B is appended..

Diversion.

Several people suggested diverting the footpath in preference to closing it. Looking at a plan of the area, it seems possible that the footpath could either be diverted to the northern boundary, coming out between the caretaker's house and number 21 Sandholme Drive. However, whilst there is a substantial hedge which would screen 21 Sandholme Drive, the caretaker's house would be severely compromised by such a diversion as it would result in the loss of privacy and a large amount of garden. In addition to this the route is also lower than the school and could provide a route which is not well overlooked. There is also the cost to consider – secure fencing and a surfaced path of 2m width.

An alternative diversion would be to the other perimeter, which would be extremely costly as the Trim Trail would also need to be relocated in addition to the cost for fencing and surfacing. The cost for a potential diversion can be taken into account and as the applicant; it is the school that would have to meet this cost.

However, the option to divert is unlikely to appease local users of the route who also enjoy the use of the current surfaced route as a pleasant open path and the associated access to the fields and play areas as these would not be available.

Diverting the footpath would allow the school to keep the site locked at any time. However, the loss of a fairly significant slice of playing space from a modest sized field and the associated costs of the works may be prohibitive.

An approximate figure for surfacing a 2m wide asphalt path could be £100 per linear metre (this is the figure that the Council requires as a bond from developers with regard to the provision of new footpath in housing developments).

An approximate figure for constructing and erecting a 2.4m high palisade fence could be £60 per linear metre, this would include posts, but would not cover all costs of removing items currently on the perimeter – such as the trim trail.

On this basis, a diversion to the northern perimeter (shown B-C) on the Public Consultation plan measures approximately 182 metres (desktop exercise) x £160 per linear meter = £29,120. This would not include any costs to the removal or disturbance to the caretakers'

cottage or garden. A diversion to the east and south perimeter (shown B-D-A) measures approximately 220 metres x £160 per linear metre = £35,200. This would not include any costs associated with moving or altering the trim trail or the pond if needed.

These are not actual costs from a properly costed estimate and could in reality be either higher or lower, but this is a rough estimate based on figures used by the Council currently.

Closing the public footpath.

Given that even a conservative estimate of the costs of fencing and surfacing a diversion would run into a five figure number, it seems unlikely that this is an option that would be pursued.

If diversion is not an option, then we would have to consider making an Order to close the public footpath. These Orders do not allow for part time closure, it is all or nothing. If an Order is made, there is a period of time during which objections, comments or representations can be made.

If objections are made, the Order would be referred to the Planning Inspectorate as the Council cannot confirm opposed diversion or extinguishment orders. A decision would then be made by an Inspector at either a Public Inquiry or Hearing.

The grounds for making an Order under Section 118B are quite specific and we must consider if there is sufficient evidence to justify an Order. An extract from the Highways Act 1980 is included for information on this point.

The evidence that has been supplied by the school at present is included. This reflects that more detailed logs of incidents have been kept since Mrs Siddall became Head. Further incidents have occurred since the last date of the log as supplied.

The evidence that has been supplied by the Police at present is also included. This captures data from both Burley and Wharfedale School and Burley Oaks, which was requested as they are near neighbours and we wanted to see if both schools were affected. Again, reports of incidents have been logged more thoroughly in the last couple of years.

Comparison was sought between the two schools as they are physically very close but Burley Oaks does not have a public footpath through its site. We understand that Burley Oaks had previously had quite a tolerant attitude to allowing out of school hours use of its site which also changed as a result of a drive around a national agenda to improve perimeters following negative comments through the Ofsted inspection process. Burley Oaks is now fenced off and tolerates less informal access.

Several other schools in the area are investing in new fencing or entrance arrangements. It is perhaps a reflection of changed priorities in policy and education. Mrs Siddall has provided a note about this which is included.

There is also a body of support, especially from some (but not all) parents at the school to close the footpath.

Local Ward Councillors have also been involved and Cllr Jackie Whiteley has been pressing for action on this matter as she feels there are serious safeguarding aspects to address.

In addition to the data supplied by the school and the Police, it has also been suggested that there are other risks to safety that we do not have easy access to information about, as it is confidential, not public or exists as risk that has not yet materialised (but still requires consideration).

Releasing this information would undermine the school's safeguarding duty to children and their families. This type of information could include:

- The risk that individuals with illegal intentions (against people or property) can access the site during school hours.
- As dog walkers are free to use the footpath, a risk exists to (particularly younger) children from less well controlled animals.
- Disputes involving parents and/or previous pupils.
- The risk of children leaving the school site due to an un-gated and unlocked access
- Additional risks from the above to children with certain learning difficulties
- Difficulties posed to staff during play times when supervising children and having people walking through the site.
- Whilst unlikely, the possibility of random attacks on the school as a weak target was also raised and whilst the possibility of this might be small, the consequences of any such incident would be severe.

The school has only supplied us with information that can be readily shared publicly and have withheld certain details such as the names of the older children who have been banned from school premises and any other details that might make families identifiable.

Closing the footpath would not prevent every such incident, but it would reduce the risk and enable the school to more easily identify people not allowed to be on site during school hours and deal with that appropriately.

What has the school done already to secure the site?

Part of the criteria for a S118B Order is that the school must have already taken steps to improve security and minimise risk (Section 118B (8)(a)).

At Burley Woodhead School a number of steps have already been taken:

- All doors and windows facing the public footpath are kept shut when a room is left empty. However, this can leave the school feeling stuffy and more enclosed, especially during summer months.

- CCTV cameras have been installed.
- Visitors to the school are securely signed in and out.
- Children practice ingress drills to enable them to safely return into the building in the event of a problem occurring outside.
- Children are given regular input in assemblies about stranger danger and told not to speak to anyone who is on the school site who they do not know or who is not wearing a school visitor's badge. They must tell a member of school staff if anyone tries to speak to them.
- Minimal equipment is left outside due to previous vandalism.
- There is an on-site caretaker.
- Staff members watch for footpath users when the children are outside and use walkie talkies to alert other members of staff if someone walks through. Anyone walking through the site is carefully monitored by staff.
- People are requested not to walk dogs through school grounds although this does still happen on a regular basis, creating issues with the removal of dog faeces and children being kept away from the dog

However incidents still occur and safeguarding concerns remain.

The impact of the public footpath had been cited in a previous Ofsted report which had found safeguarding around this issue to be inadequate.

Since the application to close the footpath, which may have been partly prompted by this previous report, there has been a subsequent Ofsted report by which the school has now been graded as 'Good'. This report followed an inspection between 26-27 September 2017.

The following section has been copied from the report.

Effectiveness of leadership and management Good

Safeguarding

- The arrangements for safeguarding are effective.
- A public footpath running across the school grounds poses a significant challenge for the school to manage the risk to pupils. The procedures the school has put in place are effective to ensure the safety of pupils.
- Pupils' behaviour is good. There is a comprehensive and rigorous system in school for monitoring pupils' behaviour.

- Leaders and staff follow correct procedures to ensure that pupils are safe. They take appropriate action when necessary, refer to and communicate with outside agencies and follow up concerns.
- Safeguarding training has given staff a good understanding of their obligations. Pupils are made aware of the importance of safeguarding through assemblies and lessons.
- All members of staff are checked before they are employed for their suitability to work with children. Accurate and up-to-date records of these checks are maintained.
- Pupils say that they feel safe because the school looks after them. Nearly all parents who responded to Parent View agree that their child feels safe in school. The school conducts a range of risk assessments to keep both pupils and staff safe.
- Rates of attendance are good. The school has taken effective actions to improve the attendance and reduce persistent absence of the disadvantaged pupils.

It could be argued that one of the aspects of the schools original concerns, that of a poor Ofsted report, has been improved by other measures that have been put into place.

It is also a requirement of the S118 legislation that all other available measures to reduce and minimise problems are taken first and the Council is satisfied that the school have done this and the improved Ofsted report also reflects the efforts that they have gone to.

However, whilst these measures have improved the situation, incidents of vandalism and criminal damage have still been reported at the school up to the date (September 2017) that statistics from both the schools own records and the Police logs of incidents that have been requested. Further incidents have occurred since the log was supplied to the Council.

What more could the school do differently if the footpath were closed?

They could establish a secure perimeter around the site, with lockable gates at every entrance point. This would better meet the requirements for safeguarding.

It would also mean anyone on site could be more easily identified and dealt with.

Pupils would be safely kept on site at all times.

School equipment could be better protected from vandalism and excessive wear and tear.

Dogs could be more easily excluded.

The school would be at no more risk from intruders than any other school (without a public right of way through their sites).

It is worth noting that this focus on improved site security and more substantial boundary treatments and separate/dedicated access for visitors to segregate them from pupils is not unique to this school. See note regarding policy change.

Effect on footpath users.

Closing the footpath would have a negative impact on legitimate footpath users (considering both the legal line and the surfaced route) with the loss of a useful and pleasant route through the school grounds.

The school would also lose the benefit of the informal surveillance that users of the paths and the field provides.

Whilst there is no requirement with an Order to close a footpath to provide an alternative, there is in effect a nearby footpath that provides a route that is only slightly further to walk.

Depending on where you start and finish, the difference is only a couple of minutes walking time at a steady pace. This footpath has a few physical deficiencies which have been pointed out by some respondents, some of which we can try and remedy to improve the route for users if funding can be identified.

Another significant issue which the consultation has highlighted, which is related to but legally separate – is out of school hours access to the playing fields, trim trail and hard surfaced areas around the school.

Access to these recreational areas is highly valued by the local residents and is used currently by families and reflected on with affection by others whose children have since grown up. Loss of access to this facility was mentioned repeatedly by people responding to the consultation and amongst people supportive of closing the site during school hours many people asked for access outside of this time to be retained, or suggested they would not object to closure on the condition access was allowed at other times outside of school hours.

However, the school are unable to agree to any binding agreement to secure access as it would cut across the legal requirements for closure and would seem contrary to some of the arguments that the closure of the footpath is necessary. Informal access may still be available some of the time, but this has to remain separate to any decision about closure.

This issue was raised in another PI to a similar closure and the Inspector gave little weight to this argument. This is also appended.

Conclusions:

- The response to the informal consultation into this matter produced a significant number of responses.
- Both the legal line of the footpath and the surfaced, but not recorded, route are used and valued by the public.

- The access to the school fields by some local residents is highly valued and there is awareness that the closure of the footpath could also mean this access was no longer freely available.
- However, despite this long term use of the facilities, it is informal and not protected in law. However benign much of this use is, it still has a negative impact on the school in many ways.
- Part time closure by means of a Traffic Regulation Order is unlikely to be applicable in the circumstances and the requirements around enforcement and signage mean that realistically it cannot be practically implemented or effective.
- Diversion to either perimeter might satisfy those users who purely use the footpath as a means to get from one place to another, but the cost to the school would be prohibitive and arguably, it would make more sense to improve the existing footpath nearby which provides a very similar linkage, at lower cost and with less impact on the size of the school facilities.
- Diversion would not suit those people who wish to continue to have access to the school fields as this would be unavailable as the footpath would be fenced and separate from the fields.
- The measures the school have already put into place to improve safeguarding have been recognised by Ofsted and the presence of the footpath does not in itself constitute a risk in their evaluations.
- However, the nuisance and damage to the school site is continuing and the measures the school have in place have some impacts on their staffing resources and the perception of risk from stranger danger etc.
- Therefore, there are really only two options. To do nothing, or to make an Order to close the public footpath under the relevant legislation. It is highly likely that an Order to close the footpath would be objected to. In the event of an objection, the Order would be referred to the Planning Inspectorate for determination. This would allow an independent Inspector to review all the evidence, listen to all the arguments and make an impartial decision.
- Having reviewed other Public Inquiry decisions into similar Orders, we are confident that the Order could be made and would satisfy the first part of the test. Whilst many of the reports are of relatively trivial incidents, they are quite frequent, with something being recorded most months, sometimes several times a month. We think it is reasonable to consider this level of nuisance would be reduced if access to the premises was less readily available; this arguably satisfies the later part of the test.
- The loss of the route to the public user should not be taken lightly, but there is a nearby public footpath which serves a very similar purpose. There are some minor defects with this route, but we do not accept that it is completely unacceptable. Nor is it a requirement of a footpath closure to provide an alternative route.

- The loss of the amenity of the school fields, whilst regrettable for those who enjoy and value it is not an issue that we can take into account when deciding whether or not to make an Order.
- If the Council makes an Order to close the public footpath, this decision will be supported and endorsed by some but rejected by, and will disappoint others.

The Council is satisfied that the tests to make an Order under this legislation are met.

We will now carry out the usual consultations we make with user groups and elected members, we have a body of responses from local people already.

Following this next stage the Council will make a formal decision about whether or not to make an Order. If an Order is made, notices are published in the local press and also posted on site.

Orders are open to public comment. Anyone against the proposal can formally object. If objections are received the Council cannot confirm the Order so it would be referred to the Planning Inspectorate to be decided by an Inspector. An Inspector is independent to the Council and would weigh up the arguments on both sides, test to see if the legal requirements both to make and confirm an Order are met and issue a decision.

We feel this would be a fair and transparent way to decide if the footpath should be kept open or closed.

Other documents referred to:

- Public Consultation plan
- Extract from Traffic Regulation Act 1984 and advice.
- Extract from Highways Act 1980, Section 118B.
- Log of incidents on site – school records dated from early 2015 to date of request.
- FOI request data from Police – dated from December 2012 to date of request.
- National agenda for safeguarding and local responses in LS29 area – supplied by Mrs Siddall.
- Examples of Decision Notices from similar Orders.