



## **Highways Act 1980 – Section 118**

### **CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017**

#### **Order Making Authority's Submission Bundle**

##### **Contents:**

- A. OMA's covering letter
- B. PINS Checklist and H&S questionnaire
- C. Location plan
- D. Scanned copy of the 2017 Extinguishment Order (originals sent under separate cover)
- E. Extract from the Definitive Map and Statement for Central Bedfordshire
- F. OMA's Statement of Reasons
- G. OMA's Comments on Objections
- H. Objection letter of Mr Stewart Chalkley
- I. List of notified parties
- J. Statutory Undertakers' responses
- K. Copy of Notices publicising the making of the Order and press notice
- L. Report to Central Bedfordshire Council's Development Management Committee
- M. Development Management Committee Minutes
- N. Pre-Order consultation responses

##### **To follow**

- O. Landowner consent forms

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**TAB A**

**A. OMA's covering letter**

E-mail to: Jean.McEntee@pins.gsi.gov.uk

## RECORDED DELIVERY

**Ms. Jean McEntee**  
The Planning Inspectorate  
4/04 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN

**Your ref:**  
**Our ref:** ARL/FP5/AM  
**Date:** 18 September 2018

**Dear Ms. McEntee**

### Highways Act 1980 – Section 118

#### **CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017**

**This document bundle has been sent electronically as a PDF file**

In accordance with the Public Path Orders Regulations 1993 (SI 1993 No 11), I enclose a completed Checklist for Order Making Authorities together with the required documents in support of my Council's request that the above-named Extinguishment Order should be confirmed with the minor modifications as listed in the *Statement of the Reasons* for confirmation of the Order.

The statutory undertakers were consulted; UK Power Networks responded that they would be affected but has consented to the Order. I enclose written consent of those affected along with other undertakers' responses.

I certify that, in accordance with the requirements of the Act, notices have been published, served and posted on site and at the local offices.

#### **Central Bedfordshire Council**

Priory House, Monks Walk  
Chicksands, Shefford  
Bedfordshire SG17 5TQ

**Telephone** 0300 300 8305

**Email** [customer.services@centralbedfordshire.gov.uk](mailto:customer.services@centralbedfordshire.gov.uk)  
[www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk)



I also certify that consultations have been held with the other authorities and statutory bodies and that on 29<sup>th</sup> November 2017 the following prescribed organisations were served with a copy of the Notice of the making of the Order and a copy of the Order:

The Open Spaces Society, the Ramblers Association, the local representative of the Ramblers Association, the local representative of the Auto Cycle Union, Byways and Bridleways Trust, the British Horse Society, the Chiltern Society, and the Parish Council.

As explained within the Council's *Statement of Reasons*, there was an applicant. However, the Order made was not that requested by the applicant and consequently the Order has been adopted by the Council as a Council-generated scheme. The *Statement of Reasons* also details that the majority of the retained Order width is already available for public use.

The Council's Outdoor Access Improvement Plan (its version of a RoWIP) has no material provisions which would detrimentally impact on the 2017 Order. The Council's OAIP can be found on-line at:

<http://www.centralbedfordshire.gov.uk/leisure/countryside/outdoor-access/improvement.aspx> .

The Council's *Statement of Reasons* makes reference to its Rights of Way Enforcement Policy which can be found online at:

[http://www.centralbedfordshire.gov.uk/Images/enforcement-policy\\_tcm3-6499.pdf](http://www.centralbedfordshire.gov.uk/Images/enforcement-policy_tcm3-6499.pdf)

The case officer has written to the landowners requesting permission for the Inspector to have access to the land. The access consent forms will be forwarded to you in due course.

The Council supports the confirmation of the Order and is content for the Secretary of State to decide the Order by way of written representations. In the event of the Order being confirmed by the Secretary of State with the minor modifications as listed in the *Statement of Reasons* for confirmation of the Order, the Council would publish Notice of confirmation in the local press and post it on site. In the event of the Order not being confirmed, notice will be duly served.

If a public hearing or an inquiry is required it is likely to last less than a day. The Council's Officer involved in this case has booked leave for Easter 2019.

The documents relating to the Order have been placed and may be seen free of charge at the offices of Central Bedfordshire Council Highways, Priory House, Monks Walk, Chicksands, Shefford between 9.00am and 5.00pm on Mondays to Thursdays and between 9.00am to 4.00pm on Fridays. A PDF version of the Council's bundle will also be made available on the Council's [website](#).

I look forward to hearing from you.

**Central Bedfordshire Council**

Priory House, Monks Walk  
Chicksands, Shefford  
Bedfordshire SG17 5TQ

**Telephone** 0300 300 8305

**Email** [customer.services@centralbedfordshire.gov.uk](mailto:customer.services@centralbedfordshire.gov.uk)  
[www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk)

Yours faithfully



**Adam Maciejewski** mIPROW  
Senior Definitive Map Officer

**Direct telephone** 0300 300 6530

**Email** adam.maciejewski@centralbedfordshire.gov.uk

**Please reply to:**

Adam Maciejewski  
Highway Assets Team  
Central Bedfordshire Council  
Thorn Turn Highways Depot  
Thorn Road  
Houghton Regis  
DUNSTABLE, LU5 6GJ

← *Please note my new address*

**Central Bedfordshire Council**

Priory House, Monks Walk  
Chicksands, Shefford  
Bedfordshire SG17 5TQ

**Telephone** 0300 300 8305

**Email** customer.services@centralbedfordshire.gov.uk  
[www.centralbedfordshire.gov.uk](http://www.centralbedfordshire.gov.uk)

**TAB B**

## **B. PINS Checklist and H&S questionnaire**

**CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH  
EXTINGUISHMENT ORDER 2017**

## Checklist for Order Making Authorities

<b>DOCUMENT – the documents shown in bold are those required by legislation.</b>	<b>Doc. Ref.</b>
<b>Signed/sealed order in duplicate.</b> <b>(Please do not attach/staple other documents to the sealed orders.)</b>	Under separate cover
Three copies of the order and associated maps.	Tab D
OMA's submission letter. Please include, if possible, dates when your Council would not be available for a hearing or inquiry over the next 11 months.  <b>Although we will do our best to avoid any dates you provide to us, we are unable to give any guarantees.</b>	Covering letter (and as Tab A)
<b>Statement of the grounds on which it is considered the order should be confirmed.</b>  <ul style="list-style-type: none"> <li>The statement must explain why the order meets the relevant criteria. It is not sufficient to simply repeat the criteria of the section of the Act under which the order is made.</li> <li>If you intend to rely on your statement of grounds and do not propose to submit a statement of case in due course, please also submit a full list of the documents/evidence<sup>1</sup> on which your statement of grounds is based.</li> <li><u>If your Council is not supporting the order</u> please submit a Statement of the grounds which explains why you have taken this stance. This should include your interpretation of the evidence examined by your Council before deciding whether or not to make the Order.</li> </ul> <p><b>If you wish to do so, you may submit the Council's comprehensive statement of case with the Order. You will not then need to submit a further statement (unless subsequent evidence is discovered which needs to be added). <b>To assist the appointed Inspector, please ensure your statement of case is properly paginated and indexed</b></b></p>	Tab F
<b>Representations and objections to the order (including supporters),</b> along with a covering list of their names.	Tab H
<b>Statement containing the OMA's comments on the objections.</b>	Tab G

<sup>1</sup> Please ensure that the submitted documents are of good quality and capable of being reproduced without any loss of detail. Maps may need to be scanned at a slightly higher resolution than words.

<b>Copy of the notice publicising the order together with a copy of newspaper cutting(s).</b>	Tab K
<b><u>REFER TO NOTE 1 BELOW</u></b>	
<b>Certificate that, in accordance with the requirements of the Act, notices have been published, served and posted on site and at the local offices.</b>	Covering letter
<b>Certificate that the necessary consultations have been carried out (other local authorities and statutory undertakers) <u>N.B. For HA 118B and 119B this includes the police authority</u></b>	Covering letter
Copies of any replies to the pre-order consultation and the responses by the OMA.	Tab L
<b>Name and address of every person notified under either</b> (i) paragraph 1(3)(b)(i), (ii) and (iv) of Schedule 6 to the 1980 Act; (ii) paragraph 3(2)(b)(i), (ii) and (iv) of Schedule 15 to the 1981 Act; or (iii) paragraph 1(2)(b)(i) to (iii) and (v) of Schedule 14 to the 1990 Act.  Please ensure the list you send to us is up to-date. If it is possible for you to do so, we would appreciate this information being submitted in a format that we can easily photocopy onto label sheets – please see illustration at Note 3 below.	Tab I
<b>Undertaking that if confirmed, notice will be duly published and served; or if not confirmed notice will be duly served.</b>	Covering letter
Location map to enable the Inspector to locate the site.	Tab C
Written permission from the landowner allowing the Inspector access to the land (where applicable).	To follow
Name and address of the applicant.	CBC
Confirmation that the OMA is supporting the order. If you are not then you will need to arrange for a person, usually the applicant or a supporter, to present the case for the Order(s). Please provide details of this person.	Covering letter
Details of the time and place where documents relating to the order will be made available for public inspection by the authority.	Covering letter
Health and Safety issues; please complete the attached questionnaire.	Tab B
In the event that the Order Map is larger than A3, an A3 (or	n/a

smaller) copy of the Order Map with the appropriate grid references. (We are unable to photocopy or scan maps which are larger than A3 in size).	
<b><u>REFER TO NOTE 2 BELOW</u></b>	
Secretary of State's letter of dispensation (WCA - see paragraph 3(4) of Schedule 15)(HA – see paragraph 1(3C) of Schedule 6)(TCPA – see paragraph 1(6) of Schedule 14)(if applicable).	n/a

<u>WCA only</u>	
<ul style="list-style-type: none"> <li><b>Extract from the definitive map and statement;</b></li> </ul>	
<ul style="list-style-type: none"> <li>Evidence forms where the order involves user evidence; unless you are submitting your full statement of case at this stage, we only need to know whether there are any user evidence forms and how many for now.</li> </ul>	
<ul style="list-style-type: none"> <li>In the event that the Order has been severed, a copy of the letter issued to the Secretary of State. Please make reference to the fact that the Order has been severed in your submission letter.</li> </ul>	
<u>If your Council has been directed to make the Order</u>	
<ul style="list-style-type: none"> <li>The Secretary of States' decision;</li> </ul>	
<ul style="list-style-type: none"> <li>A copy of the Application and supporting documents</li> </ul>	

<u>HA and TCPA only</u>	
<ul style="list-style-type: none"> <li>Undertaking that any new path or way to be provided will be ready for use before the order comes into operation;</li> </ul>	Covering letter
<ul style="list-style-type: none"> <li>Extract from the definitive map and statement; and</li> </ul>	Tab E
<ul style="list-style-type: none"> <li>Where applicable, details of any statutory designation affecting the order route(s) (such as common land, AONB, SSSI).</li> </ul>	n/a

<u>HA only</u>	
<ul style="list-style-type: none"> <li><b>Where land is owned by an ecclesiastical benefice, certificate that the Church Commissioners have been notified.</b></li> </ul>	n/a

<p><u>S26, 118 and 119</u></p> <ul style="list-style-type: none"> <li>▪ A copy of the <u>relevant</u> part(s) of the Rights of Way Improvement Plan (ROWIP), or confirmation that there isn't any relevant provision. (Inspectors must have regard to any material provisions of a ROWIP prepared by the local highway authority but do not require the full version).</li> </ul>	<p>Covering letter</p>
<p><u>S118A and 119A(Rail Crossing Orders)</u></p> <ul style="list-style-type: none"> <li>▪ <b>A copy of the application for the order;</b></li> <li>▪ A copy of any documents submitted by the applicant in support of the request for the order;</li> <li>▪ A copy of the case put forward by the operator justifying the need for an order to close or divert the railway crossing;</li> <li>▪ A copy of any related maps or plans that accompanied the request for the order;</li> <li>▪ Details of any related proposals such as a bridge or tunnel order;</li> <li>▪ <b>Where required, a certificate showing that the OMA has consulted or received consent from any other authority or body;</b></li> <li>▪ <b>A statement of the nature and effect of any such consultation.</b></li> </ul>	
<ul style="list-style-type: none"> <li>▪ Confirmation that the land affected is owned by the operator, or, where the land is not owned by the operator, the landowner has agreed to the proposal;</li> <li>▪ Confirmation that the operator is prepared to maintain the whole or part of the path, and has agreed to defray part or all of the cost of making up the new path and any compensation that may be payable;</li> <li>▪ Where the path is to be diverted over/under a bridge or tunnel subject to an order under section 48 of the Transport and Works Act 1992, clarification that the structure has been completed or that it is dependent on the diversion order.</li> </ul>	
<p><u>S118B and 119B (Special Extinguishment and Diversion Orders)</u></p> <ul style="list-style-type: none"> <li>▪ Contact details for the local fire authority.</li> </ul>	

<u>S118B(1)(a) and 119B(1)(a)</u> <ul style="list-style-type: none"> <li>Where applicable, a copy of any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998;</li> <li>A copy of the relevant map for the area as contained in the designation order.</li> </ul>	

<u>TCPA only</u> <ul style="list-style-type: none"> <li>A copy of the relevant planning permission and a copy of the approved plan or copy of relevant planning application (where Order made following the Growth and Infrastructure Act 2013);</li> <li>Plan indicating how the path or way will be affected by the development;</li> <li>Confirmation that all the land affected is owned by the developer or consent from the landowner(s) as appropriate;</li> <li>Confirmation about the current stage of the development.</li> <li><b><u>Written consent of any statutory undertaker affected or confirmation that none is so affected. If replies have been received from the statutory undertakers, these must be included;</u></b></li> </ul>	

**Please now proceed to the health and safety questionnaire which is appended to this checklist.**



## Health and safety at the site questionnaire

The Inspector will visit the site and will need to know what safety equipment and protective clothing to bring. The following questions indicate the type of information the Inspector will need about the site. Please supply any additional information on a separate sheet of paper.

1. Is the site uneven or does it present any other known risks? Is special footwear or any other Personal Protection Equipment required?

Route is along tarmacked footpath. Land to the side is either surfaced garage forecourt or rear garden (patio).

2. Is there any likelihood of exposure to pets or other animals which may present a risk to the safety of the Inspector?

Unknown – will check

3. Is the site remote and/or can it be seen from other highways or rights of way?

Site easily access from nearby roads and Arlesey Railway Station

4. Does the site have a good mobile phone signal or is there easy access to a public telephone should the emergency services be required?

Unknown – but think that mobile reception is OK

5. Is the right of way easily accessible? Will arrangements for access by the Inspector need to be made in advance?

Usable route is freely accessible. Obstructed sections will need to be accessed by prior arrangement with landowners (see Notified Parties sheet)

6. Are there any dangerous pieces of equipment or substances stored at any point along the right of way?

None

7. If there is any other relevant information which the Inspector should be aware of that is not covered in this questionnaire?

No

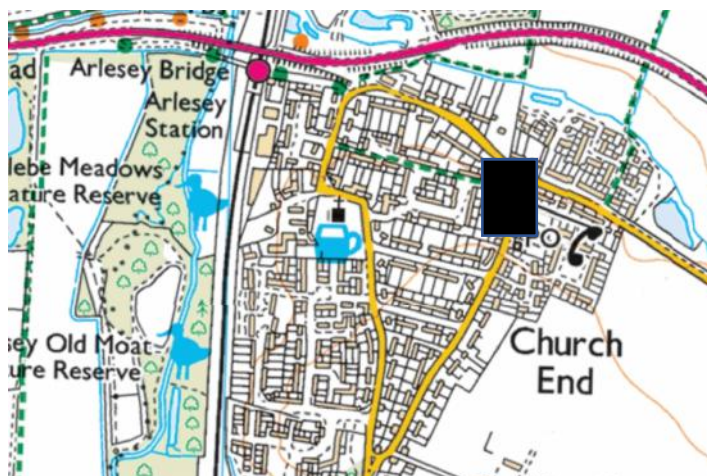
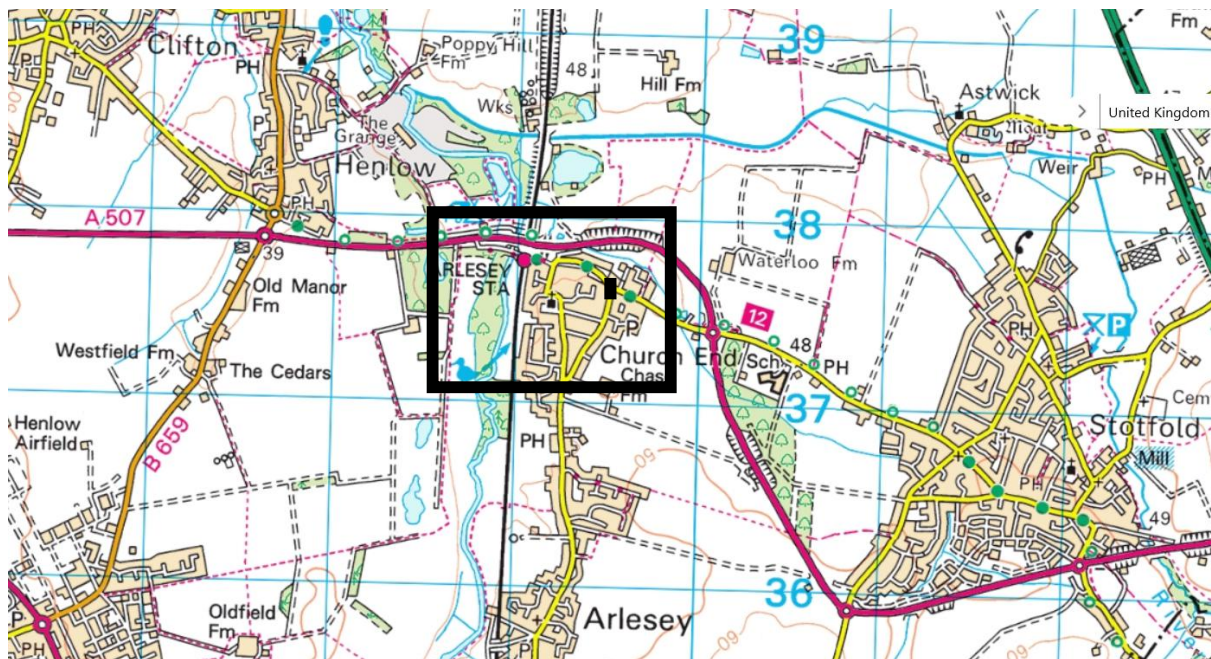
**TAB C**

## **C. Location plan**

Highways Act 1980 – Section 118

CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH  
EXTINGUISHMENT ORDER 2017

LOCATION PLAN



Approx. extent of Order map



**TAB D**

**D. Scanned copy of the 2017 Extinguishment Order**  
(originals sent under separate cover)

PUBLIC PATH EXTINGUISHMENT ORDER

HIGHWAYS ACT 1980

CENTRAL BEDFORDSHIRE COUNCIL

CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017

This Order is made by Central Bedfordshire Council ("the authority") under Section 118 of the Highways Act 1980 ("the 1980 Act") because it appears to the authority that part of the width of the footpath as described below is not needed for public use.

The Arlesey Parish Council has been consulted as required by section 120(2) of the 1980 Act.

BY THIS ORDER

The public right of way over the land situate in the parish of Arlesey and shown as the black hatched area between points A-B on the map attached to this Order and described in the Schedule to this Order shall be extinguished after seven days from the date of confirmation of this Order

SCHEDULE

PUBLIC FOOTPATH TO BE EXTINGUISHED IN THE PARISH OF ARLESEY

The partial width of Footpath No 5 Arlesey to be stopped up extends from its junction with another part of Arlesey Footpath No. 5 at Ordnance Survey Grid Reference (OS GR) TL 1946 3762 (Order map - point A) in an east south easterly direction for approximately 12 metres through the private garden of No.72 Stotfold Road to OS GR TL 1947 3762 where it enters the rear of the Arlesey Garage. The footpath continues for approximately 16 metres through the building before exiting and continuing in an east south easterly direction for approximately 18 metres across the Garage's forecourt to terminate at its junction with House Lane at OS GR TL 1950 3761 (Order map - point B).

The width of Footpath No 5 Arlesey to be stopped up is approximately 2.7 metres as shown by the black hatched area on the Order map. That part of the width of Footpath No 5 Arlesey to be retained has a width of 2.0 metres as measured from the northern property boundary of No. 65 House Lane and is shown shaded pink in the Order map between OS GR TL 1946 3762 (Map point A) and OS GR TL 1950 3761 (Map point B).



In witness whereof

THE COMMON SEAL OF

CENTRAL BEDFORDSHIRE COUNCIL

was hereunto affixed this

day 24<sup>th</sup> of November 2017

in the presence of:



*AC McFadden*  
*Solicitor*

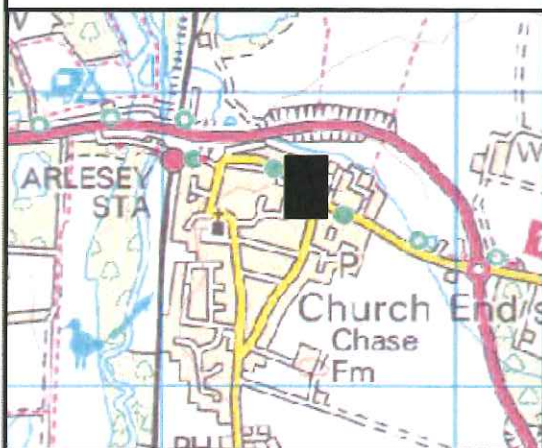
Signed

.....

# EXTINGUISHMENT OF PART OF THE WIDTH OF ARLESEY PUBLIC FOOTPATH NO 5



## LOCATION PLAN



Width of FP5 to be stopped up A - B



Width of FP5 to be retained A - B



Public Footpath



Produced by Central Bedfordshire Council  
Based on Ordnance Survey Mapping  
Crown Copyright. All rights reserved  
OS Licence Number 100049029.2017

Date : 14/11/2017

Scale 1:500

Central  
Bedfordshire

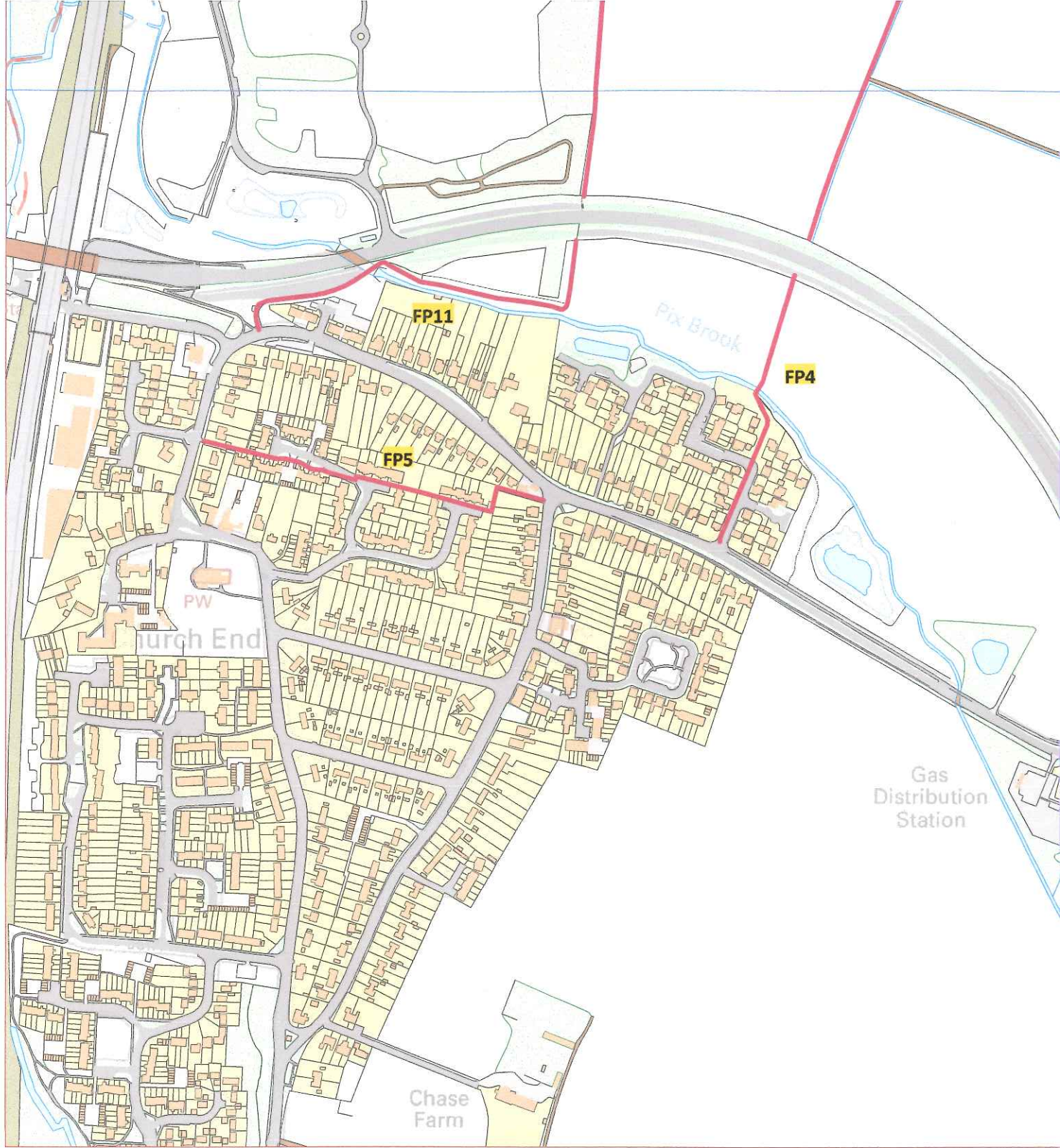


**TAB E**

**E. Extract from the Definitive Map and Statement for Central  
Bedfordshire**

238000

237000



# THE DEFINITIVE MAP FOR CENTRA

Central  
Bedfordshire

Produced by Central Bedfordshire Council.  
Based on Ordnance Survey Mapping.  
Crown Copyright. All rights reserved.  
OS Licence Number 100049029.

Public Footpath

Public Bridleway

Byway Open to All Traffic

Parish Boundary

**TAB F**

## **F. OMA's Statement of Reasons**



## Highways Act 1980 – Section 118

### CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017

#### Statement of reasons why the order should be confirmed

##### Introduction

Central Bedfordshire Council (*"the Council"*) made the Central Bedfordshire Council (Arlesey: part of Footpath No 5) Public Path Extinguishment Order 2017 (*"the Order"*) on 24<sup>th</sup> November 2017. The order was made under Section 118 of the Highways Act 1980 (*"the 1980 Act"*).



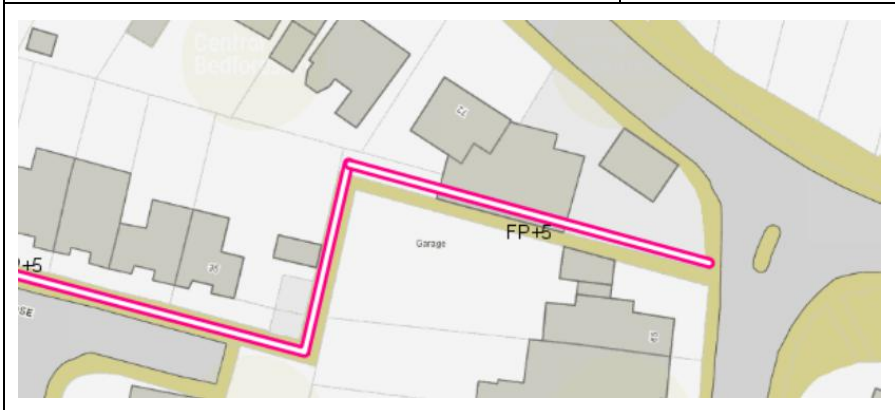
The order was made consequent to an application originally submitted in July 2015 by solicitors acting for Mr Trevor Gunn who was the then owner of the Arlesey Garage, which was situated at the corner of House Lane and Stotfold Road, Arlesey. Mr Stewart Chalkley was the occupier and tenant of the garage and was in the process of purchasing the Arlesey Garage when a CON29 property search revealed that Arlesey Footpath No. 5 passed through the property. Following the sale of the property, the application was taken on by the current landowner, Mr Stewart Chalkley.

##### Description of footpath

Arlesey Footpath No. 5 (*"the footpath"*) is shown on historical maps as passing adjacent to and to the south of the Arlesey Garage as shown by the early Ordnance Survey map extracts within the 24<sup>th</sup> May 2017 Development Management Committee report which is included with the bundle submitted to the Planning Inspectorate. In the 1950s and 60s the route of the footpath was a wide access track to the nearby field, now part of the Chase Close housing estate situated to the south of the unaffected section of the footpath.

The parish council recorded the line of the footpath as passing along this access route with the footpath drawn down the centreline of the wide route. However, like many of the Definitive Statements for Central Bedfordshire's rights of way, no width was recorded in the Statement for the footpath. Consequently, the Council has based its determination of the legal width of the footpath on the historical mapping and has concluded that the width of the footpath was equivalent to the full width of the track.



	
<p>1952 parish survey map for Footpath No. 5.</p>	<p>Current GIS record of Footpath No. 5 after Chase Close TCPA diversion.</p>
	<p>Enlargement of the GIS record to show current property boundaries. The existing track is shown by the hazel-coloured line.</p>

Modern mapping and the historic photographs included within the Committee report show that the c.1970s extension to the Arlesey Garage was constructed over part of the agricultural access track – and thus over part of the width of the footpath. Part of the garage forecourt and associated forecourt boundary wall was also constructed over the footpath as was an extension to the rear garden of the neighbouring property, No 72 Stotfold Road. The land ownership extents are shown on the extract from the Land Registry index map below.

	<p>Extract from the Land Registry index map showing the alleyway occupied by the footpath (highlighted green) under Title BD251604.</p>
---	---

The alleyway occupied by the footpath (highlighted green above) is registered under Title BD251604 as a caution against first registration by eastern Power Networks due to the presence of a nearby electricity substation and the fact their cabling runs along under the footpath. No other party is identified. The index map does show that the Arlesey Garage and No 72 Stotfold Road are registered as owning land that historically was part of the agricultural access track and is part of the footpath.

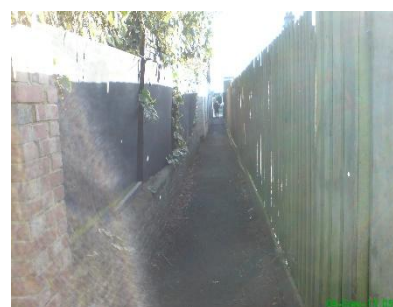
The footpath is now fenced in or enclosed by buildings to either side and has a usable width along the resulting alleyway connecting House Lane to Chase Close of between approximately 0.82 and 1.22 metres. This makes it impossible for pushchairs or wheelchairs to pass each other or oncoming walkers. However, it is a functional width for unidirectional traffic. The narrow section extends from point B on House Lane for approximately 44 metres to the dog-leg and wider alleyway at point A adjacent to Chase Close.



*Footpath No. 5 at point B*



*Footpath No. 5 looking westwards halfway between points A and B.*



*Footpath No. 5 at point A*

## Previous Order

The issue of the narrowness of Footpath No. 5 was previously addressed in 2000-2001 by the former Bedfordshire County Council when it made a public path diversion order to move the legal line of the footpath out of the Garage on to the alleyway. At that time, the County Council considered the footpath to be narrower (and not reflect the full width of the historic track) and didn't include the alleyway. The *County Council of Bedfordshire (Arlesey: Part of Footpath No. 5) Public Path Diversion Order 2001* was made in March 2001 but received objections from a number of local and national walking groups. For reasons unknown, the order was not forwarded to the Secretary of State and instead was informally abandoned without resolving the issue. The Central Bedfordshire Council Development Management Committee resolution of 24<sup>th</sup> May 2017 formally abandoned the 2001 diversion order.

## Development Management Committee Resolution

The report submitted to the Council's 24<sup>th</sup> May 2017 Development Management Committee (see bundle) recommended that the obstructed portion of the footpath situated beyond the confines of the alleyway should be stopped up under Section 118 of the 1980 Act. This was because this portion

of the footpath was obstructed by the Arlesey Garage or by its forecourt wall and the rear boundary wall/fence/trees of No. 72 Stotfold Road. The report considered a practical solution was the extinguishment of the obstructed width as the retained width had been used in its current form for many years (possibly since c. 1965-70) and the extinguishment would not affect the extent physically available for public use but would resolve the legal limbo of the Arlesey Garage which stood under theoretical threat of demolition due to being constructed over a public highway.

However, representations from the Arlesey Town Council resulted in the Committee adopting an alternative stance and subsequently resolving to retain a greater width of footpath – with a continuous width of 2 metres - which is comprised of: the section of footpath within the alleyway; plus, an additional portion of the footpath which is currently obstructed by part of the Arlesey Garage, its forecourt and boundary wall; and the garden wall, trees and garden shed of No. 72 Stotfold Road. The Committee's rationale behind this resolution was that, whilst members were comparatively silent on what to do with the structures that currently exist within the proposed 2 metre width to be retained, with the general view was to let things remain as they are for the time being, the greater retained width could then be reclaimed at a future date if and when the Arlesey Garage was redeveloped to provide a better and wider route for public use. It was acknowledged that this would leave the applicant and owner of the Arlesey Garage (Mr Chalkley) in some degree of legal uncertainty with regard to the 0.8 – 1.2 metres of footpath obstructed by his garage buildings.

Because of the Committee's resolution to retain part of the width of Arlesey Footpath No. 5 within/through the Arlesey Garage, the new owner of the garage (Mr Chalkley) has objected to the order. Please see the Council's *Comments on Objections* for a further discussion on this.

### **Legislation: Sections 118 and 130**

Section 118 of the 1980 Act enables the Council, as the Highway Authority, to extinguish public footpaths, bridleways, and restricted byways and is paraphrased below:

- (1) *Where it appears to a council as respects a footpath, bridleway, or restricted byway in their area... ..that it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, extinguish the public right of way over the path or way...*
- (2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way...*
- (3) - (5) (omitted)

- (6) *For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.*

Whilst Section 118 is targeted more towards the complete extinguishment of a public right of way – rather than the reduction in its width, the legal tests paraphrased above still apply. Moreover, the Secretary of State is bound to consider the tests of Section 118(2) which reviews whether the extinguishment is expedient, along with whether that part of the path to be stopped-up would be used apart from the order, as well as having regard to the effect the extinguishment would have on the land served by the path: the earlier test of “need” under Section 118(1) being already addressed by the Order Making Authority.

#### Expediency

The Council considers that the reduction in width is expedient in that it would help facilitate the business use of the Arlesey Garage whilst reducing the impact of the footpath on the owners of No. 72 Stotfold Road. This gain is off-set by the proposed retention of a wider than usable width of the existing alleyway which could be reclaimed at a future date should the Arlesey Garage be redeveloped. The Council feels that this compromise balances the current and future needs of users and residents.

#### Extent of future use

The width of Footpath No. 5 along the existing alleyway is unaffected by the order and will continue to be used irrespective of the outcome of the order. The section of footpath outside the alleyway that is proposed to be retained will, for the foreseeable future, remain obstructed unless the Council either resolves to take enforcement action or is compelled to do so by a court order. That section of the footpath proposed to be stopped up by the order is currently obstructed and unusable. The Secretary of State needs to take a view on whether the Arlesey Garage, as a non-residential business premises, is a “temporary circumstance” – even though it has been *in situ* for upwards of 50 years.

Philips J. in the case of *R. v Secretary of State for The Environment, ex parte Barry Stewart (1980) 39 P. & C.R. 534* addressed the issue of what was a temporary circumstance, stating,

*“...The question of what are “temporary circumstances” has given rise to some problems that I did not do very much to solve in my judgment in Wood v. Secretary of State for the Environment, a transcript of which I have. To the extent that I suggested that, in deciding whether an obstruction could be a temporary circumstance, it was irrelevant to consider whether it could or was likely to be removed, I now doubt my correctness.*

*The expression ‘temporary circumstances’ entitles one to have regard to a wide variety of considerations, but obviously the prime question is, in the case of an obstruction, whether it is likely to endure. Now it may, by its nature, be temporary, or it may, by its nature, seem to be permanent, but, if it appears, in the case of what seems to be a permanent obstruction, that it is likely to be removed, I now see no reason why it could not be regarded as temporary. I went on in that judgment to point out the difficulties of allowing obstructions, or any doubt as to the line of a path, to count to any substantial extent as reasons for making a stopping-up order. Were it not so, it would mean that the easiest way to get a footpath stopped up would be*



*unlawfully to obstruct it, and that cannot be the policy of the section. Therefore, it seems to me that only rarely can it be right to make an order stopping up a highway on the ground that, as a result of an unlawful obstruction, or as the result of doubt as to the line of the highway, it is difficult to use it."*

Philips J. went on to say in the same judgment,

*"...Well now, what is the situation where one has an obstruction? It seems to me that the shrubs, the hedge and the tree are really 'temporary circumstances.' There is a highway there; either they obstruct it or they do not. If they do not, it is nothing to the point. If they do, it seems to me that determined members of the public, or relevant associations, will have no problem in taking the correct legal steps to have them removed.*

Well, what about the substation? The information is sparse. There is no reason to suppose that it is very large, and no doubt it is of the ordinary small kind that one sees in such positions. Again, the situation is that either it is obstructing the line of the path or it is not. If it is not, it does not matter. If it is, it seems to me to be impossible for there to be any justification for it remaining where it is. Then again, while I do not go so far as to say that these matters are irrelevant when considering section 110, I would have thought that they could be of only the most marginal importance..."

The Council, in its Enforcement Policy for public rights of way defines "temporary features" as things such as: trees and hedges, walls and fences, gates and stiles, detached domestic garages and greenhouses. The Council defines "permanent features" as: an inhabited domestic residence, operational commercial and agricultural buildings and any water feature protected under S.23 of the Land drainage Act 1991.

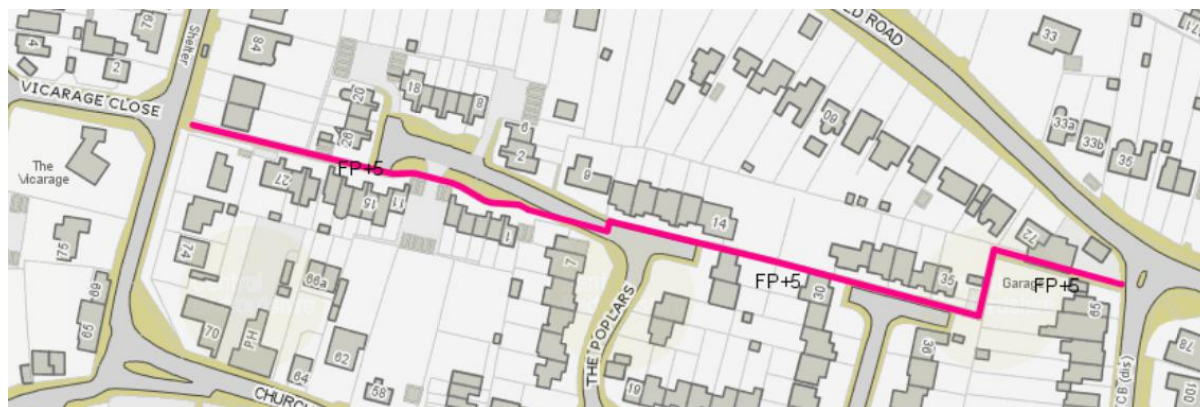
However, the Council, in its decision to retain a greater width to the alleyway than the current walkable route has recognised that the Arlesey Garage, whilst being a long-lived feature, may at some point in the future be torn down and redeveloped – and hence enable the greater retained width to be fully utilised as a public footpath. However, the Council considers that there is no need for the full current legal width of approximately 4.6 metres, as defined by the historic boundaries to the agricultural access track, to be retained – even if the Arlesey Garage were demolished and the site cleared.



*The Arlesey Garage as viewed from the south-west across the rear garden of No. 65 House Lane*

## Effect on land served

The section of Arlesley Footpath No. 5 affected by the Order starts at House Lane (point B on the Order plan) and proceeds west-north-westwards for approximately 44 metres to the dog-leg at point A where it connects to a short length of footpath leading to the turning head of Chase Close. Footpath No. 5 continues across the turning head and thence along an alleyway to The Poplars and thence to its junction with Church Lane as shown below.



Footpath No. 5 in its entirety is used for residents to get to the railway station in the west and the local post office and Nisa convenience store to the east (situated close to point B in House Lane and at No. 78 Stotfold Road respectively).

The reduction in width of the footpath to 2 metres from its current approximate 4.6 metre width would not affect the use of the footpath by local residents accessing local services and amenities. This width reflects the similar width to the remainder of the footpath between point A and Church Lane to the west. The current reduced width due to the physical obstruction of the path has more effect on the level of local use: this mainly affects double buggies and potentially some of the larger mobility scooters which would need to find an alternative route either along Stotfold Road to the north or St Peter's Avenue to the south, depending on the user's final destination.

The land crossed by the section of Footpath No. 5 is, as mentioned above, a garage forecourt and building (an MoT / service bay currently used for parts storage) and the rear garden (mainly patio and small shed) and garden fence of No. 72 Stotfold Road. The removal of the footpath from these features would greatly benefit the owners, although not as much as if the footpath had been reduced to the current width of the alleyway which would obviate the owners' ongoing obstruction of part of the historic width of the footpath.

## **Requested Modification to Order**

UK Power Networks ("UKPN") was consulted on the proposed partial extinguishment of Arlesley Footpath No. 5 as a statutory undertaker. UKPN has electricity supply cables installed beneath the walkable part of Footpath No. 5 between points A-B on the Order plan. These originate from the nearby electricity sub-station. UKPN agreed in an e-mail, dated 6 January 2017 and included in the bundle, not to object to the extinguishment as its apparatus are unaffected by the Order. However, the Council had agreed to recognise the rights of access by UKPN and its successors within the order

but with the passage of time this commitment was overlooked. The Council now asks for the Secretary of State for Environment, Food and Rural Affairs to modify the order by inserting the following text after paragraph 1 of the Order:

Insert:     2.   *Notwithstanding paragraph 1 of the Order UK Power Networks and its successors shall have the following rights over the land referred to in paragraph 1 above, namely:- the right to access land between points A and B for the purposes of access, inspection, and maintenance of plant and equipment associated with its undertaking.*

## **Conclusions**

Central Bedfordshire Council, as the Order making authority, has made an order to stop up part of the width of Arlesey Footpath No. 5. The Order stops up approximately half of the width of the footpath which is currently unusable due to being built over by the Arlesey Garage or otherwise obstructed by forecourt wall and the adjoining garden's boundary walls and trees.

The Council considers that the retained width of 2.0 metres is sufficient for public use and would adequately serve the needs of the local residents – notwithstanding the fact that some of the retained width would remain obstructed by the garage building and other obstructions unless the Council chose to enforce the legal width of the path which would include the partial demolition of the Arlesey Garage.

Central Bedfordshire Council therefore requests that the Secretary of State for Environment, Food and Rural Affairs confirms the Order with the minor modifications as requested above to reserve rights for the abovementioned statutory undertaker.

---

20 August 2018

**Dr. Adam JH Maciejewski mIPROW**  
Senior Definitive Map Officer

**Central Bedfordshire Council**  
Thorn Turn Highways Depot  
Thorn Road  
Houghton Regis  
DUNSTABLE  
LU5 6GJ

Tel. 0300 300 6530  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk)

**TAB G**

## **G. OMA's Comments on Objections**



## Highways Act 1980 – Section 118

### CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017

#### Comments on Objections

##### Introduction

Central Bedfordshire Council (*"the Council"*) made the Central Bedfordshire Council (Arlesey: part of Footpath No 5) Public Path Extinguishment Order 2017 (*"the Order"*) on 24<sup>th</sup> November 2017. The order was made under Section 118 of the Highways Act 1980 (*"the 1980 Act"*).

The order was made consequent to an application originally submitted in July 2015 by solicitors acting for Mr Trevor Gunn who was the then owner of the Arlesey Garage, which was situated at the corner of House Lane and Stotfold Road, Arlesey. Mr Stewart Chalkley was the occupier and tenant of the garage and was in the process of purchasing the Arlesey Garage when a CON29 property search revealed that Arlesey Footpath No. 5 passed through the property. Following the sale of the property, the application was taken on by the current landowner, Mr Stewart Chalkley.

##### Objection

The order has subsequently received one objection. This is by Mr Stewart Chalkley, the owner of the Arlesey Garage who submitted his letter of objection (see bundle) on 13 December 2017 which was before the stated deadline of 5<sup>th</sup> January 2018 and is thus considered duly made. The five grounds of Mr Chalkley's objection are summarised as:

1. The footpath has been as it is for 70 years. When one of the previous owners of the premises (Mr Pyman) applied to extend the garage to the southwards (Mr Chalkley erroneously refers to "north wall") nothing was said about the footpath being 2 metres wide. This would probably have been in the late 60s or early 70s.
2. Mr Chalkley received a letter from the former Bedfordshire County Council on 28 March 2001 informing him that a diversion order was being made to divert the footpath out of the garage and on to the existing alleyway.
3. More planning consent was applied for in 1984. Again, no mention of the footpath was made.

4. No. 65 House Lane (which is situated immediately to the south of Footpath No. 5) has built on their boundary and would have applied for planning consent. Why was the footpath not disputed then? Have they encroached onto the footpath?
5. The sensible option was the 2001 diversion to move the legal line onto the walked route. It is a waste of time to remove a building and neighbour's trees to provide a footpath width that has never been 2 metres wide.

I will address Mr Chalkley's points in turn below.

1. The Definitive Map and Statement for eastern Bedfordshire was published in c.1964 and did not contain any recorded width. Consequently, the local planning authority (the former Mid-Beds District Council) may not have realised there was an issue. However, the actions of the District Council in granting any planning consent for the extension to the Arlesey Garage did not legally extinguish Footpath No. 5 – but merely encouraged the developer to obstruct the right of way. Arlesey Footpath No. 5, despite having no recorded width is considered to have a width equivalent to the agricultural access track – approximately 4 - 4.5 metres. Central Bedfordshire Council's current policy is to seek to have footpaths with a minimum width of 2.0 metres – hence the Order seeks to retain this width despite some of this width currently being unavailable due to trees, walls and part of the Arlesey Garage building.
2. The *County Council of Bedfordshire (Arlesey: Part of Footpath No. 5) Public Path Diversion Order 2001* was made in March 2001 but received objections from a number of local and national walking groups. For reasons unknown, the order was not forwarded to the Secretary of State and instead was informally abandoned without resolving the issue. The Central Bedfordshire Council Development Management Committee resolution of 24<sup>th</sup> May 2017 formally abandoned the 2001 diversion order. Having determined that the footpath had a width equal to the width of the old agricultural access, the 2001 diversion order was flawed in trying to divert the footpath onto itself. The only remedy was a new extinguishment order to stop-up part of the width whilst retaining that part which existed along the alleyway (plus the moiety of the retained 2 metres which for the time being would be obstructed by the Arlesey Garage).
3. As with (1) above, any consent given by the District Council as the planning authority would have no effect on the legal width of Footpath No. 5.
4. Within the errors and constraints imposed by the scale of historic mapping (OS 25":1 mile and 1:2,500 maps of 1937 and 1977) it is unclear whether any of the historic access track has been encroached upon by the boundary fence or garage of No. 65 House Lane. If there has been encroachment by No. 65, this is considered *de minis* and unenforceable. What is clear, though, is that the Arlesey Garage and the rear garden of No. 72 Stotfold Road have both encroached significantly over the historic access track.
5. The legal issues with carrying out a diversion of the footpath have been addressed in (2) above. I believe Mr Chalkley does not mind what legal mechanism is used to remove the right of way which currently passes through his garage (and his neighbour's garden). He just wishes to have that section of the footpath running through his property stopped up. Mr Chalkley's reason for objecting is that, whilst his and Mr Gunn's application sought to do

this, the Council committee's resolution was different in that it seeks to retain a greater width which would still leave a part of the footpath obstructed by his (and his neighbour's) property – thus leaving him with the same degree of legal uncertainty as he currently has.

## **Conclusion**

None of the issues raised by Mr Chalkley's objection are fatal to the confirmation of the Order as made. Consequently, Central Bedfordshire Council requests that the Secretary of State for Environment, Food and Rural Affairs confirms the Order with the minor modifications requested in the Council's *Statement of Reasons* relating to the rights of statutory undertakers.

However, should the Secretary of State consider that the Order requires any further modification, I believe Mr Chalkley would support a modified order which sought to stop up a greater width of the footpath, retaining just the width of the available alleyway as this would reflect Mr Gunn's original application. Such a modification would affect land not within the original order and so the modified order would require re-advertising. Such a modification, however, is likely to be opposed by the Arlesey Town Council whose representations led the Council to make the current Order and by Central Bedfordshire Council as the order-making authority.

---

20 August 2018

**Dr. Adam JH Maciejewski mIPROW**  
Senior Definitive Map Officer

**Central Bedfordshire Council**  
Thorn Turn Highways Depot  
Thorn Road  
Houghton Regis  
DUNSTABLE  
LU5 6GJ

Tel. 0300 300 6530  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk)



**TAB H**

## **H. Objection letter of Mr Stewart Chalkley**



Ack 19/12/17 by Am



19 DEC 2017

Adam Maciejewski  
Senior Definitive Map Officer  
Central Bedfordshire Council  
Priory House, Monks Walk,  
Chicksands, Shefford  
Beds.  
SG17 5TQ

ASG (Arlesey)  
Unit 1 Ram Yard  
High Street  
Arlesey  
Bedfordshire  
SG15 6SW  
t. 01462 731284  
e. asg.arlesey@gmail.com  
www.asggrouppgarages.co.uk

13 Dec 2017

Your Ref: ARL FP5 2017

Dear Mr Maciejewski,

**Re extinguishment of part width of Footpath No. 5 Arlesey**

Thank you for the opportunity to object to the order. I have a number of reasons to object to this:-

1. The footpath has been as it is for 70 years. When Mr Pyman owned the property he applied for planning to build the garage north wall and at that time nothing was said about a footpath needing to be 2metres wide.
2. On the 28<sup>th</sup> March 2001 I have a letter from Bedfordshire County Council informing the owner that the footpath was to be diverted and the new width would be variable between 0.7 and 1.5 metres. This order, we have been informed, was not executed.
3. Further planning was applied for in 1984, again no mention of footpath width mentioned.
4. Number 65 House lane has built on their boundary and would have applied for planning, why was it not disputed then? Have they encroached onto the width?
5. The sensible option is what was proposed in 2001, to leave it as it is. This has been in my opinion, a waste of council time and money. To remove a building and our neighbours established trees to provide a footpath width that has never been 2 metres wide.

Yours sincerely,

Stewart Chalkley

<b>TAB I</b>
--------------

**I. List of notified parties**

## Highways Act 1980 – Section 118

### CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017

#### Notified Parties

Affected owners (own structures on line of footpath)	
Mr Stewart Chalkley Arlesey Service Garage Unit 1, Ram Yard High Street Arlesey Beds SG15 6SW  Mr Chalkley's e-mail = <a href="mailto:service@asgbiggleswade.co.uk">service@asgbiggleswade.co.uk</a>	Mrs W Kirwan 72 Stotfold Road Arlesey Beds SG15 6XT  Mrs Wendy Kirwan's e-mail = [REDACTED]
Adjacent owners	
Mrs Gillian Taylor 65 House Lane Arlesey Beds SG15 6XX	The Owner/Occupier 35 Chase Close Arlesey Beds SG15 6UU
Statutory consultees / user-groups etc	
The Open Spaces Society 25A Bell Street Henley on Thames Oxon RG9 2BA	The Ramblers Association 2nd Floor, Camelford House 87-90 Albert Embankment LONDON SE1 7TW
Byways and Bridleways Trust <a href="mailto:notices@bywayandbridleway.net">notices@bywayandbridleway.net</a>	Mr J Rogers ROC The Cottage Castle Mill Goldington Road BEDFORD MK41 0JA
Mr P Patmore Local Footpath Officer Ramblers Association 10 Town Meadow Drive Shefford SG17 5EF	The Chiltern Society Rights of Way Group The White Hill Centre White Hill Chesham HP5 1AG
British Horse Society Stoneleigh Deer Park Kenilworth Warwickshire CV8 2XZ	Ms Sue Folkes Clerk to Arlesey Town Council Town Council Office Arlesey Community Centre High Street Arlesey, Beds SG15 6SN

**TAB J**

## **J. Statutory Undertakers' responses**



Adam Maciejewski  
Central Bedfordshire Council  
Priory House  
Monks Walk  
Chicksands  
Shefford  
Bedfordshire  
SG17 5TQ

Plant Protection  
National Grid  
Block 1; Floor 1  
Brick Kiln Street  
Hinckley  
LE10 0NA  
E-mail: [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com)  
Telephone: +44 (0)800 688588

**National Grid Electricity Emergency Number:**  
**0800 40 40 90\***

**National Gas Emergency Number:**  
**0800 111 999\***

\* Available 24 hours, 7 days/week.  
Calls may be recorded and monitored.

[www.nationalgrid.com](http://www.nationalgrid.com)

**Date:** 28/11/2016

**Our Ref:** EA\_TE\_Z5\_3FWP\_032929

**Your Ref:** ARL/FP5-PPXO/AM (JH)

**RE: Formal Enquiry, SG15 6XT, Footpath No. 5 at Arlesey Garage, House Lane, Arlesey, Central Bedfordshire**

Thank you for your enquiry which was received on 22/11/2016.  
Please note this response and any attached map(s) are valid for 28 days.

An assessment has been carried out with respect to National Grid Electricity Transmission plc's, National Grid Gas plc's and National Grid Gas Distribution Ltd's apparatus. Please note it does not cover the items listed in the section "Your Responsibilities and Obligations", including gas service pipes and related apparatus. For details of National Grid's network areas please see the National Grid website (<http://www.nationalgrid.com/uk/Gas/Safety/work/>) or the enclosed documentation.

### **Are My Works Affected?**

National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry.

**National Grid therefore has no objection to these proposed activities.**

The contractor should contact National Grid before any works are carried out to ensure our apparatus is not affected by any of the proposed works.

## Your Responsibilities and Obligations

The "Assessment" Section below outlines the detailed requirements that must be followed when planning or undertaking your scheduled activities at this location.

It is your responsibility to ensure that the information you have submitted is accurate and that all relevant documents including links are provided to all persons (either direct labour or contractors) working for you near National Grid's apparatus, e.g. as contained within the Construction (Design and Management) Regulations.

This assessment solely relates to National Grid Electricity Transmission plc (NGET), National Grid Gas plc (NGG) and National Grid Gas Distribution Ltd (NGGD) apparatus. This assessment does **NOT** include:

- National Grid's legal interest (easements or wayleaves) in the land which restricts activity in proximity to National Grid's assets in private land. You must obtain details of any such restrictions from the landowner in the first instance and if in doubt contact National Grid.
- Gas service pipes and related apparatus
- Recently installed apparatus
- Apparatus owned by other organisations, e.g. other gas distribution operators, local electricity companies, other utilities, etc.

It is **YOUR** responsibility to take into account whether the items listed above may be present and if they could be affected by your proposed activities. Further "Essential Guidance" in respect of these items can be found on the National Grid Website (<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934982>).

This communication does not constitute any formal agreement or consent for any proposed development work; either generally or with regard to National Grid's easements or wayleaves nor any planning or building regulations applications.

NGG, NGET and NGGD or their agents, servants or contractors do not accept any liability for any losses arising under or in connection with this information. This limit on liability applies to all and any claims in contract, tort (including negligence), misrepresentation (excluding fraudulent misrepresentation), breach of statutory duty or otherwise. This limit on liability does not exclude or restrict liability where prohibited by the law nor does it supersede the express terms of any related agreements.

If you require further assistance please contact the National Grid Plant Protection team via e-mail ([click here](#)) or via the contact details at the top of this response.

Yours faithfully

National Grid Plant Protection Team

# ASSESSMENT

## Affected Apparatus

The National Grid apparatus that has been identified as being in the vicinity of your proposed works is:

- Low or Medium pressure (below 2 bar) gas pipes and associated equipment. (As a result it is highly likely that there are gas services and associated apparatus in the vicinity)

## Requirements

**BEFORE carrying out any work you must:**

- Carefully read these requirements including the attached guidance documents and maps showing the location of National Grid apparatus.
- Contact the landowner and ensure any proposed works in private land do not infringe National Grid's legal rights (i.e. easements or wayleaves). If the works are in the road or footpath the relevant local authority should be contacted.
- Ensure that all persons, including direct labour and contractors, working for you on or near National Grid's apparatus follow the requirements of the HSE Guidance Notes HSG47 - 'Avoiding Danger from Underground Services' and GS6 – 'Avoidance of danger from overhead electric power lines'. This guidance can be downloaded free of charge at <http://www.hse.gov.uk>
- In line with the above guidance, verify and establish the actual position of mains, pipes, cables, services and other apparatus on site before any activities are undertaken.



# GUIDANCE

## **Excavating Safely - Avoiding injury when working near gas pipes:**

[http://www.nationalgrid.com/NR/rdonlyres/2D2EEA97-B213-459C-9A26-18361C6E0B0D/25249/Digsafe\\_leaflet3e2finalamends061207.pdf](http://www.nationalgrid.com/NR/rdonlyres/2D2EEA97-B213-459C-9A26-18361C6E0B0D/25249/Digsafe_leaflet3e2finalamends061207.pdf)

## **Standard Guidance**

### **Essential Guidance document:**

<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=8589934982>

### **General Guidance document:**

<http://www2.nationalgrid.com/WorkArea/DownloadAsset.aspx?id=35103>

### **Excavating Safely in the vicinity of gas pipes guidance (Credit card):**

<http://www.nationalgrid.com/NR/rdonlyres/A3D37677-6641-476C-9DDA-E89949052829/44257/ExcavatingSafelyCreditCard.pdf>

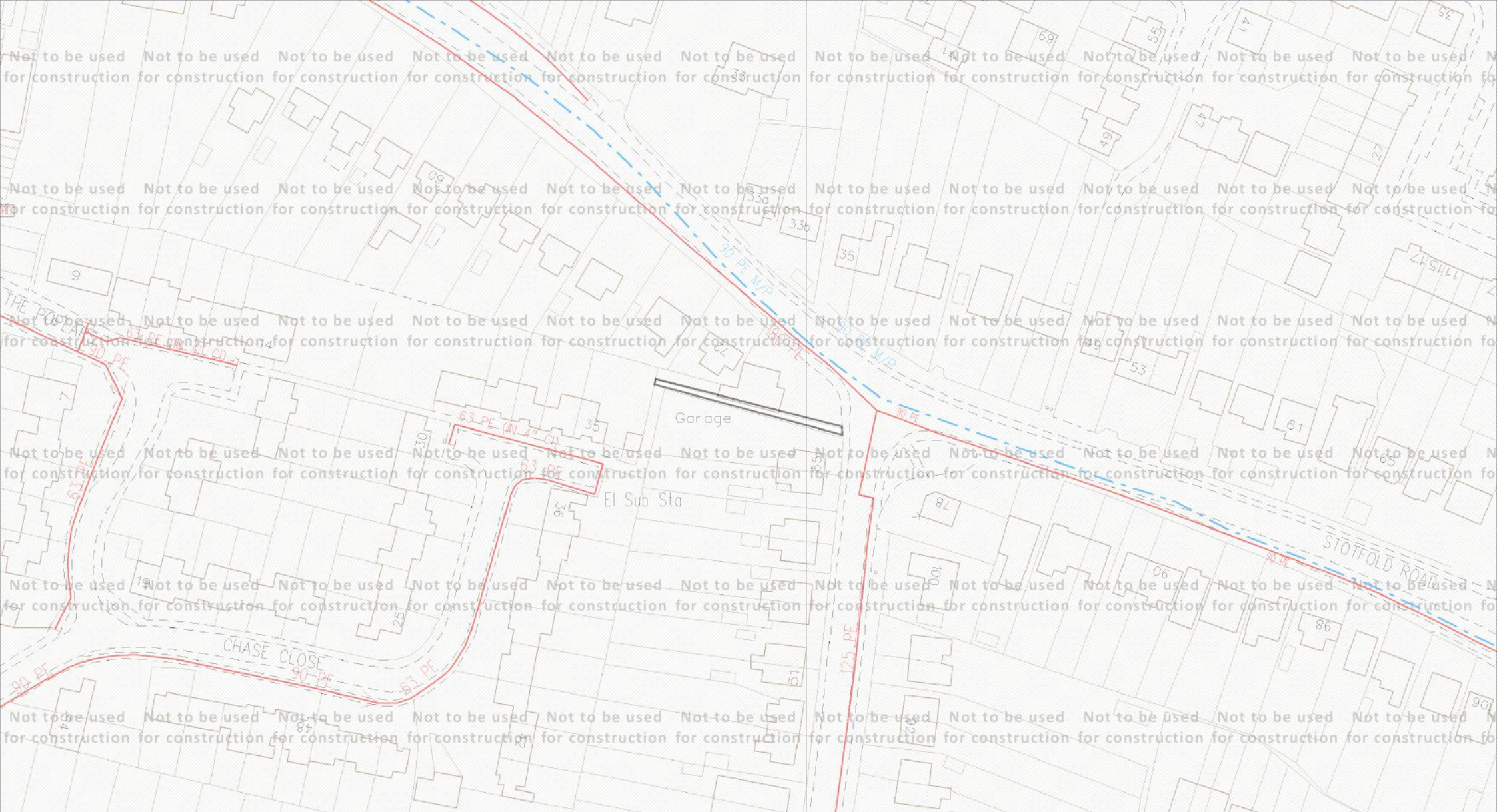
### **Excavating Safely in the vicinity of electricity cables guidance (Credit card):**





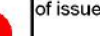

<http://www.nationalgrid.com/NR/rdonlyres/35DDEC6D-D754-4BA5-AF3C-D607D05A25C2/44858/ExcavatingSafelyCreditCardelectricitycables.pdf>

Copies of all the Guidance Documents can also be downloaded from the National Grid Website:

<http://www.nationalgrid.com/uk/Gas/Safety/work/downloads/>





ID: EA_TE_Z5_3FWP_032929		View extent: 361m, 196m		National Grid has no objection to this application		Map 1 of 1 (GAS)	
USER: Jodie.Hunter		LP MAINS		<p>This plan shows those pipes owned by National Grid Gas plc in its role as a Licensed Gas Transporter (GT). Gas pipes owned by other GTs, or otherwise privately owned, may be present in this area. Information with regard to such pipes should be obtained from the relevant owners. The information shown on this plan is given without warranty, the accuracy thereof cannot be guaranteed. Service pipes, valves, syphons, stub connections, etc., are not shown but their presence should be anticipated. No liability of any kind whatsoever is accepted by National Grid Gas plc or their agents, servants or contractors for any error or omission. Safe digging practices, in accordance with HS(G)47, must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all persons (either direct labour or contractors) working for you on or near gas apparatus. The information included on this plan should not be referred to beyond a period of 28 days from the date of issue.</p>		<p>MAPS Plot Server Version 1.9.0</p> <p><b>nationalgrid</b></p> <p>Requested by: Central Bedfordshire Council</p> <p>This plan is reproduced from or based on the OS map by National Grid Gas plc, with the sanction of the controller of HM Stationery Office. Crown Copyright Reserved. Ordnance Survey Licence number 100024886</p>	
DATE: 28/11/2016		MP MAINS					
DATA DATE: 27/11/2016		IP MAINS					
REF: ARL/FP5-PPXO/AM (JH)		LHP MAINS					
MAP REF: TL1937		NHP MAINS					
CENTRE: 519486, 237617		<p>0m 25m</p> <p>Approximate scale 1:1250 on A4 Colour Landscape</p>					
<p>Some examples of Plant Items:</p> <p>Valve  Depth of Cover  Syphon  Diameter Change  Material Change  Out of Standard Service </p>							



# ENQUIRY SUMMARY

## Received Date

22/11/2016

## Your Reference

ARL/FP5-PPXO/AM (JH)

## Location

Centre Point: 519486, 237617

X Extent: 46

Y Extent: 14

Postcode: SG15 6XT

Location Description: SG15 6XT, Footpath No. 5 at Arlesey Garage, House Lane, Arlesey, Central Bedfordshire

## Map Options

Paper Size: A4

Orientation: LANDSCAPE

Requested Scale: 500

Actual Scale: 1:1250 (GAS)

Real World Extents: 361m x 196m (GAS)

## Recipients

pprsteam@nationalgrid.com

## Enquirer Details

Organisation Name: Central Bedfordshire Council

Contact Name: Adam Maciejewski

Email Address: adam.maciejewski@centralbedfordshire.gov.uk

Telephone: 0300 3006530

Address: Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ

## Description of Works

s/u Highways Act, Section 118 - Stopping up of footpaths and bridleways (DB)

## Enquiry Type

Formal Enquiry

## Activity Type

Highways

## Notice Types

Notice Type: Section Notice (Highways Act, Section 118 - Stopping up of footpaths and bridleways)

# openreach

a BT Group business



Repayments Project Office  
PP G69  
Cambridge Trunks  
109-117 Long Road  
Cambridge CB2 8HG

Tel: 01223 826025  
Fax: 01332 822499

For Attn: Adam Maciejewski

Our Ref. BLK346/253711/JMB  
Your Ref. ARL/FP5-PPXO/AM

14 December, 2016

Dear Sir,

**HIGHWAYS ACT 1980 –SECTION 118  
PROPOSED EXTINGUISHMENT OF PART OF ARLESEY FOOTPATH NO.5, ARLESEY  
GARAGE, HOUSE LANE, ARLESEY, SG15 6XT**

Further to your notice of the proposed reduction in the width of part of Arlesey Footpath No. 5, Openreach has no objection to the order being made.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Jamie Barker'.

Jamie Barker  
Repayments Project Engineer

## Adam Maciejewski

---

**From:** Young, Jim <jim.young@ukpowernetworks.co.uk>  
**Sent:** 06 January 2017 10:43  
**To:** Adam Maciejewski; Dowden, Adam  
**Cc:** Chris Nicol; Andrew Emerton  
**Subject:** RE: The proposed reduction in the width of part of Arlesey Footpath No. 5

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** Important

Dear Adam

Based on your information below I will withdraw the objection. Can you please forward a copy of the amended extinguishment order clearly stating our rights so that we can add it to our files please.

The replacement cabling has not yet been done due to resourcing problems but, hopefully, this will be done early in the new year. I have copied in our Project Manager for this work, Adam Dowden, who can liaise with you directly regarding timings for the work and future resurfacing.

Please do not hesitate to contact me if any of this is unclear or if you need further information.

Regards

Jim Young  
Distribution Planning Engineer  
01279 314477  
[Jim.young@ukpowernetworks.co.uk](mailto:Jim.young@ukpowernetworks.co.uk)

---

**From:** Adam Maciejewski [mailto:Adam.Maciejewski@centralbedfordshire.gov.uk]  
**Sent:** 09 December 2016 13:02  
**To:** Young, Jim  
**Cc:** Chris Nicol ; Andrew Emerton  
**Subject:** RE: The proposed reduction in the width of part of Arlesey Footpath No. 5

Dear Jim  
*[cc Chris and Drew]*

Further to our telephone conversation today I am e-mailing to confirm that the legal width of Footpath No. 5 to be retained will be equivalent to the current width of the alley physically currently available for public use. I am only intending to extinguish the width of the footpath which is either beneath the extension to Arlesey Garage or contained within its forecourt or within the fenced garden of No. 72 (see plan). In order to cover any outlying cabling, I can stipulate within the public path extinguishment order that UK Power Networks and its successors will retain a right of access to that part of the highway to be extinguished. I hope, this being the case, that you can withdraw your objection. Please note the east-west line within the blue hatched area is the centre-line of the legal footpath and not the boundary wall to the alleyway.

I note that there are two LV and one HV supplies under the alleyway and that there was a proposal to open the alleyway up to lay a replacement LV cable. As I mentioned, we have had a complaint about the surfacing and were considering whether we needed to relay the entire surface. We will liaise with you over this in order to avoid any S.58 difficulties and for the path to be dug twice unnecessarily.

As requested, please find attached a plan annotated with my measurements of the available width of the alleyway.

Kind regards. Adam.

**Adam Maciejewski**  
Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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Information security classification\* of this email: **Not protected**

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**From:** Young, Jim [<mailto:jim.young@ukpowernetworks.co.uk>]  
**Sent:** Friday, December 09, 2016 11:36 AM  
**To:** Adam Maciejewski  
**Cc:** Sturgeon, Darren  
**Subject:** FW: The proposed reduction in the width of part of Arlesey Footpath No. 5  
**Importance:** High

Dear Adam, I am a little concerned by this notice as we have high voltage and low voltage underground cables in this path that provide supply to a large part of Arlesey. Any reduction in width will have an adverse effect on our ability to maintain the cables or make necessary fault repairs. It may also create a safety issue to the adjoining properties and their owners or people working there, i.e. fencing contractors, etc.

As there is no feasible diversion route for these cables I will have to object to this proposal.

Regards

Jim Young  
Distribution Planning Engineer  
01279 314477  
[Jim.young@ukpowernetworks.co.uk](mailto:Jim.young@ukpowernetworks.co.uk)

---

**From:** Adam Maciejewski [<mailto:Adam.Maciejewski@centralbedfordshire.gov.uk>]  
**Sent:** 22 November 2016 12:57  
**To:** Young, Jim <[jim.young@ukpowernetworks.co.uk](mailto:jim.young@ukpowernetworks.co.uk)>  
**Subject:** The proposed reduction in the width of part of Arlesey Footpath No. 5

**Mr. Jim Young**  
Distribution Technician  
Distribution Planning  
**UK Power Networks**  
Barton Road  
BURY ST. EDMONDS  
IP32 7BG

**Your ref:**  
**Our ref:** ARL/FP5-PPXO/AM  
**Date:** 22 November 2016

**THIS PROPOSAL MAY AFFECT YOUR ACCESS RIGHTS**

Dear Mr. Young

**Highways Act 1980 – Section 118 – The proposed reduction in the width of part of Arlesey Footpath No. 5 at Arlesey Garage, House Lane, Arlesey, Central Bedfordshire, SG15 6XT**

Under Section 121(4) of the Highways Act 1980 Central Bedfordshire Council has a statutory duty to consult UK Power Networks as you are one of the utility companies (or statutory undertakers) serving the parish of Arlesey in Central Bedfordshire. We are consulting you because we are proposing to:

- Extinguish part of the width of Arlesey Footpath No. 5 which has been encroached upon by part of Arlesey Garage and the garden to the rear as shown shaded and hatched blue on the attached map. The section of footpath shaded pink will remain unaffected by this proposal.

It is possible that you may require use of this particular public right of way to reach equipment used as part of your business or for the purpose of maintaining/inspecting your network.

The Council does not know what public rights of way UK Power Networks uses for its business. I am aware though that Footpath No. 5 serves the Chase Close electricity sub-station. If you do require the use of the aforementioned public right of way you need to inform us of this requirement - failure to do so could result in the removal of any access rights you may have along this right of way. We cannot divert or extinguish any public right of way over which you specifically require access without your consent. If you do consent to the diversion or extinguishment of a public right of way we can reserve specific access rights for you - but you will need to tell us what these are so that we can ensure that they remain. You cannot, however, unreasonably withhold consent for the diversion or extinguishment of a public right of way.

It is for these reasons that we ask you to inform us whether you need to use the stated rights of way and, if so, what access rights you would require to be retained should you consent to the diversion/extinguishment of that right of way. If UK Power Networks does not require the use of these rights of way for access you should tell us so.

Any order to divert or extinguish a public right of way will not affect any private access agreement or wayleave you may hold with a third party.

I would be most grateful if you would confirm in writing by Friday 16<sup>th</sup> December, if possible, whether UK Power Networks's access will be affected by this proposal.

Yours sincerely

**Adam Maciejewski**  
Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

*Please note that I currently work from home on Mondays, Wednesdays and Thursdays and at Bedford Borough Council on Fridays*

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Information security classification\* of this email: **Not protected**



\*Information security definitions:

Restricted - Sensitive Data only to be sent via secure email

Protected - Contains personal data covered by the Data Protection Agency

Not protected - General Data

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**TAB K**

**K. Copy of Notices publicising the making of the Order and press notice**



# Classified

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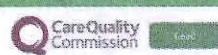
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## PUBLIC NOTICES

## PUBLIC NOTICES

### CENTRAL BEDFORDSHIRE COUNCIL (B1042, POTTON ROAD, SANDY) (TEMPORARY PROHIBITION OF TRAFFIC) ORDER 2017

NOTICE IS HEREBY GIVEN that Central Bedfordshire Council has made an Order the effect of which will be to prohibit any vehicle, except a vehicle being used for fire, police or ambulance purposes in an emergency, from proceeding along the length of B1042, Pottton Road, Sandy from Swaden to RSPB entrance.

This temporary closure is required to enable verge hardening and kerb build out work to take place and shall apply to such extent as may from time to time be indicated by the appropriate traffic signs. Where possible access will be maintained to property and premises but may be restricted from time to time according to local signing.

It is expected that the works will take place over FIVE DAYS from 4th to 8th December 2017 between 09:00am and 15:30pm. The road will be closed at all times during this period.

The alternative route is via High Street/B1042, A1 Southbound, A6001, Drove Road, Pottton Road to junction with B1042, turn left and continue to site and vice versa.

The Order will come into operation on 04 December 2017 for a period of twelve months or until the proposed works have been completed, as detailed above, whichever is the earlier.

For further information please contact Highways Helpdesk - 0300 300 8049.

DATED 01 December 2017

Central Bedfordshire Council  
Priory House  
Chicksands, Bedfordshire SG17 5TQ

Marcel Coiffait  
Director of Community Services

### CENTRAL BEDFORDSHIRE COUNCIL (HITCHIN ROAD, HENLOW) (TEMPORARY PROHIBITION OF TRAFFIC) ORDER 2017

NOTICE IS HEREBY GIVEN that Central Bedfordshire Council has made an Order the effect of which will be to prohibit any vehicle, except a vehicle being used for fire, police or ambulance purposes in an emergency, from proceeding along the length of Hitchin Road, Henlow outside number 194.

This temporary closure is required to enable sewer cleaning and preventative maintenance works and shall apply to such extent as may from time to time be indicated by the appropriate traffic signs. Where possible access will be maintained to property and premises but may be restricted from time to time according to local signing.

It is expected that the works will take place over TWO DAYS from 5th to 6th December 2017 between 09:00am and 16:00pm. The road will be closed at all times during this period.

The alternative route is via A507, Hitchin Road/A600, first exit at the roundabout onto Hitchin Road to site and vice versa.

The Order will come into operation on 05 December 2017 for a period of twelve months or until the proposed works have been completed, as detailed above, whichever is the earlier.

For further information please contact Neil Carter - Anglian Water - 07889110179.

DATED 01 December 2017

Central Bedfordshire Council  
Priory House  
Chicksands, Bedfordshire SG17 5TQ

Marcel Coiffait  
Director of Community Services

### CENTRAL BEDFORDSHIRE COUNCIL (HIGH STREET, EYEWORTH) (TEMPORARY PROHIBITION OF TRAFFIC) ORDER 2017

NOTICE IS HEREBY GIVEN that Central Bedfordshire Council has made an Order the effect of which will be to prohibit any vehicle, except a vehicle being used for fire, police or ambulance purposes in an emergency, from proceeding along the full length of High Street, Eyeworth.

This temporary closure is required to enable resurfacing work to take place and shall apply to such extent as may from time to time be indicated by the appropriate traffic signs. Where possible access will be maintained to property and premises but may be restricted from time to time according to local signing.

It is expected that the works will take place over TWO DAYS from 4th to 5th December 2017. The road will be closed at all times during this period.

The alternative route is via Eyeworth Road, High street, Pottton Road, Sutton Road and vice versa.

The Order will come into operation on 04 December 2017 for a period of twelve months or until the proposed works have been completed, as detailed above, whichever is the earlier.

For further information please contact Highways Helpdesk - 0300 300 8049.

DATED 01 December 2017

Central Bedfordshire Council  
Priory House  
Chicksands, Bedfordshire SG17 5TQ

Marcel Coiffait  
Director of Community Services

### CENTRAL BEDFORDSHIRE COUNCIL (HIGH STREET, MEPPERSHALL) (TEMPORARY PROHIBITION OF TRAFFIC) ORDER 2017

NOTICE IS HEREBY GIVEN that Central Bedfordshire Council has made an Order the effect of which will be to prohibit any vehicle, except a vehicle being used for fire, police or ambulance purposes in an emergency, from proceeding along the length of High Street, Meppershall from The Post Office (6) to Outside 21 High Street.

This temporary closure is required to enable installation of new foul sewer connection, and a bell mouth entrance to be installed and shall apply to such extent as may from time to time be indicated by the appropriate traffic signs. Where possible access will be maintained to property and premises but may be restricted from time to time according to local signing.

It is expected that the works will take place over TWELVE DAYS from 4th to 15th December 2017. The road will be closed at all times during this period.

The alternative route is via Campton Road, Gravenhurst Road, Greenway, A507, Shefford Road, High Street and vice versa.

The Order will come into operation on 04 December 2017 for a period of eighteen months or until the proposed works have been completed, as detailed above, whichever is the earlier.

For further information please contact Mikaela Hill - STD Civils - 01525 211690.

DATED 01 December 2017

Central Bedfordshire Council  
Priory House  
Chicksands, Bedfordshire SG17 5TQ

Marcel Coiffait  
Director of Community Services



### Central Bedfordshire Council Notice of Making of Public Path Order Highways Act 1980

CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017

The above Order made on 24 November 2017 under Section 118 of the Highways Act 1980 will extinguish part of Footpath No 5, Arlesley as shown on the Order map.

The partial width of Footpath No 5 Arlesley to be stopped up extends from its junction with another part of Arlesley Footpath No. 5 at Ordnance Survey Grid Reference (OS GR) TL 1946 3762 in an east south easterly direction for approximately 12 metres through the private garden of No.72 Stotfold Road to OS GR TL 1947 3762 where it enters the rear of the Arlesley Garage. The footpath continues for approximately 16 metres through the building before exiting and continuing in an east south easterly direction for approximately 18 metres across the Garage's forecourt to terminate at its junction with House Lane at OS GR TL 1950 3761.

The width of Footpath No 5 Arlesley to be stopped up is approximately 2.7 metres as shown by the black hatched area on the Order map. That part of the width of Footpath No 5 Arlesley to be retained has a width of 2.0 metres as measured from the northern property boundary of No. 65 House Lane and is shown shaded pink in the Order map between OS GR TL 1946 3762 and OS GR TL 1950 3761.

A copy of the Order and the Order map have been placed and may be seen free of charge at the Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Bedfordshire between 9.00am and 5.00pm on Mondays to Thursdays and between 9.00am to 4.00pm on Fridays. Copies of the Order and map may be bought there at a charge of £4.00. An explanatory statement can be obtained by phoning 0300 300 6530. Further details can also be found on the Council's website at: <http://www.centralbedfordshire.gov.uk/leisure/countryside/definitive-map/made.aspx>

Any representations about or objections to the Order may be sent in writing to the Senior Definitive Map Officer Adam Maciejewski, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Bedfordshire, SG17 5TQ not later than 5 January 2018. Please state the grounds on which they are made. Representations and objections must include either a postal or e-mail address. Any representations or objections made will be in the public domain and will be available for viewing/copying by members of the public.

If no such representations or objections are duly made, or if any so made are withdrawn the Central Bedfordshire Council may confirm the Order as an unopposed Order. If the Order is sent to the Secretary of State for the Environment, Food and Rural Affairs for confirmation any representations and objections which have not been withdrawn will be sent with the Order and will be made publicly available by either the Council or the Planning Inspectorate.

1 December 2017

Priory House, Monks Walk  
Chicksands, Bedfordshire  
Beds SG17 5TQ

PAUL MASON  
Assistant Director, Highways  
[paul.mason@centralbedfordshire.gov.uk](mailto:paul.mason@centralbedfordshire.gov.uk)

### ROAD TRAFFIC REGULATION ACT 1984 - SECTION 14(1)

### CENTRAL BEDFORDSHIRE COUNCIL (BIGGLESWADE: PART OF BRIDLEWAY NO 9) (TEMPORARY PROHIBITION OF THROUGH TRAFFIC) ORDER 2017

Notice is hereby given that Central Bedfordshire Council have made an Order the effect of which will be to prohibit any person proceeding on foot or on horseback or lead a horse or cycle along the length of Bridleway No 9, Biggleswade which extends from Ordnance Survey Grid Reference (OS GR) TL 1969 4594 to OS GR TL 1986 4557.

**This temporary closure is required to enable construction works to be carried out in safety. The closure is expected to take place from 1 December 2017 for six months.**

The alternative routes for bridleway users while the closure is in operation will be: Walkers should proceed west south westerly from OS GR TL 1969 4594 along Footpath No 13 and then south easterly and south westerly along Bridleway No 10. Continue along Furzenhall Road and then turn left onto Pottton Road. Continue along Pottton Road to OS GR TL 1986 4557 to its junction with Bridleway No 9 and vice versa.

Equestrians and cyclists should continue northwards along Bridleway No 9 from OS GR TL 1969 4594 and then west south westerly, generally southerly and then south westerly along Bridleway No 10 to Furzenhall Road and then turn left onto Pottton Road. Continue along Pottton Road to OS GR TL 1986 4557 to its junction with Bridleway No 9 and vice versa.

Further details, including a map, can also be found on the Council's website at: <http://www.centralbedfordshire.gov.uk/leisure/countryside/rights-of-way/temporary.aspx>

The Order will come into operation on 1 December 2017 for a period not exceeding six months or until the works which it is proposed to carry out on or near to the bridleway have been completed, whichever is the earlier. If the works are not completed within six months the Order may be extended for a longer period with the consent of the Secretary of State for Transport.

For further information please contact Andrew Gwillam, Tel: 0300 300 6544, [Andrew.gwillam@centralbedfordshire.gov.uk](mailto:Andrew.gwillam@centralbedfordshire.gov.uk)

DATED 1 December 2017

Priory House, Monks Walk  
Chicksands, Bedfordshire  
Beds SG17 5TQ

PAUL MASON  
Assistant Director, Highways

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I hereby certify that a copy of the within written Notice was displayed on site at each end of the Public Right of Way affected

Signed.....

Dated.....

*Adam Maciejewski*

*1/12/2017*

## **PUBLIC NOTICE**

**Central  
Bedfordshire**

Central Bedfordshire Council  
Notice of Making of Public Path Order  
Highways Act 1980

### **CENTRAL BEDFORDSHIRE COUNCIL (ARLESEY: PART OF FOOTPATH NO 5) PUBLIC PATH EXTINGUISHMENT ORDER 2017**

The above Order made on 24 November 2017 under Section 118 of the Highways Act 1980 will extinguish part of Footpath No 5, Arlesey as shown on the Order map.

The partial width of Footpath No 5 Arlesey to be stopped up extends from its junction with another part of Arlesey Footpath No. 5 at Ordnance Survey Grid Reference (OS GR) TL 1946 3762 (Order map - point A) in an east south easterly direction for approximately 12 metres through the private garden of No.72 Stotfold Road to OS GR TL 1947 3762 where it enters the rear of the Arlesey Garage. The footpath continues for approximately 16 metres through the building before exiting and continuing in an east south easterly direction for approximately 18 metres across the Garage's forecourt to terminate at its junction with House Lane at OS GR TL 1950 3761 (Order map - point B).

The width of Footpath No 5 Arlesey to be stopped up is approximately 2.7 metres as shown by the black hatched area on the Order map. That part of the width of Footpath No 5 Arlesey to be retained has a width of 2.0 metres as measured from the northern property boundary of No. 65 House Lane and is shown shaded pink in the Order map between OS GR TL 1946 3762 (Map point A) and OS GR TL 1950 3761 (Map point B).

A copy of the Order and the Order map have been placed and may be seen free of charge at the Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford between 9.00am and 5.00pm on Mondays to Thursdays and between 9.00am to 4.00pm on Fridays. Copies of the Order and map may be bought there at a charge of £4.00. An explanatory statement can be obtained by phoning 0300 300 6530. Further details can also be found on the Council's website at: <http://www.centralbedfordshire.gov.uk/leisure/countryside/definitive-map/made.aspx>

Any representations about or objections to the Order may be sent in writing to the Senior Definitive Map Officer Adam Maciejewski, Central Bedfordshire Council, Priory House, Monks Walk, Chicksands, Shefford, SG17 5TQ not later than 5 January 2018. Please state the grounds on which they are made. Representations and objections must include either a postal or e-mail address. Any representations or objections made will be in the public domain and will be available for viewing/copying by members of the public.

If no such representations or objections are duly made, or if any so made are withdrawn the Central Bedfordshire Council may confirm the Order as an unopposed Order. If the Order is sent to the Secretary of State for the Environment, Food and Rural Affairs for confirmation any representations and objections which have not been withdrawn will be sent with the Order and will be made publicly available by either the Council or the Planning Inspectorate.

1 December 2017

Priory House, Monks Walk  
Chicksands, Shefford  
Beds SG17 5QT

PAUL MASON  
Assistant Director, Highways  
[paul.mason@centralbedfordshire.gov.uk](mailto:paul.mason@centralbedfordshire.gov.uk)

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**TAB L**

**L. Report to Central Bedfordshire Council's Development  
Management Committee**

## Central Bedfordshire Council

Development Management Committee

24/05/2017

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### **The determination of an application to reduce the width of Arlesey Footpath No. 5**

Report of Paul Mason - Assistant Director - Highways

Report Author: Adam Maciejewski – Senior Definitive Map Officer – x76530

---

#### **Purpose of this report**

1. The eastern end of Arlesey Footpath No. 5 has been historically obstructed over the majority of its width by Arlesey Garage and the rear boundary of No. 72 Stotfold Road. The previous owner of the Garage applied for the width of the footpath within the curtilage of the Arlesey Garage to be extinguished: leaving just the narrow remainder along the adjoining alleyway. The Arlesey Town Council has objected to such a width reduction, instead requiring the retention of a greater width. This report looks at the various aspects of both the original application and the Town Council's request.

#### **RECOMMENDATIONS:**

The Committee is asked to:


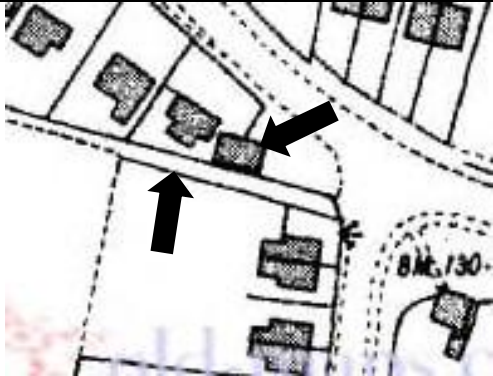
1. Approve the application to make a public path extinguishment order under Section 118 of the Highways Act 1980 to extinguish that part of the historically obstructed width of Arlesey Footpath No. 5 between points A and B as shown on the map at Appendix A, whilst retaining the unobstructed portion of the footpath that runs along the alleyway between House Lane and Chase Close with a variable width of between 0.82 and 1.22 metres.
2. Formally abandon the County Council of Bedfordshire (Arlesey: Part of Footpath No 5) Public Path Diversion Order 2001 which was objected to and never forwarded to the Secretary of State and is considered erroneous and redundant at this time.

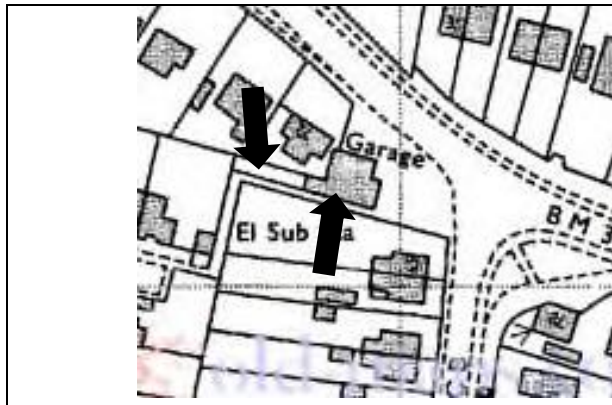
#### **Issues**

2. In May 2015 Mr. Steward Chalkley, the prospective purchaser of Arlesey Garage at the corner of Stotfold Road and House Lane asked his solicitor to conduct a CON29 property search. The results indicated that Arlesey Footpath

No. 5 passed through the curtilage of the Garage, running along the forecourt, through the 1960s extension to the property and thence through the rear garden of No. 72 Stotfold Road situated to the rear of the Garage.

3. The vendor's solicitor (acting for the then owner, Mr. Gunn) submitted an application in July 2015 to extinguish that part of the width of Footpath No. 5 within the curtilage of Arlesey Garage and No. 72. The proposal plan at Appendix A shows that the retained width of the footpath between points A-B is confined to the currently used alleyway situated between Arlesey Garage and No. 65 House Lane.
4. The Arlesey Garage has now been bought by Mr. Chalkley. Mr. Chalkley has asked to be invoiced for the public path order application whilst leaving the application in Mr. Gunn's name as they have a private financial agreement on this matter.
5. The Definitive Statement for Arlesey Footpath No. 5 does not record a legal width for the obstructed section of path between points A-B. The original 1952 parish path survey also does not record a width. The historical width of the footpath has therefore been estimated from the 1937 25":1 mile Ordnance Survey map which shows the route of the footpath as an approximately 4.0 - 4.5 metre wide agricultural access track.

	<p>Extract from the 1922 25":1 mile Ordnance Survey map (Rev. Ed.)</p> <p>The footpath is annotated "<i>F.P.</i>" for footpath on the map which indicates its character rather than status. No houses are depicted.</p> <p>There is no Garage.</p>
	<p>Extract from the 1937 25":1 mile Ordnance Survey map (3<sup>rd</sup> Ed.)</p> <p>The access to the field is now delineated by the boundary to No. 72 House Lane and is a wide track (arrowed).</p> <p>The Garage is recorded as a small building (also arrowed).</p>

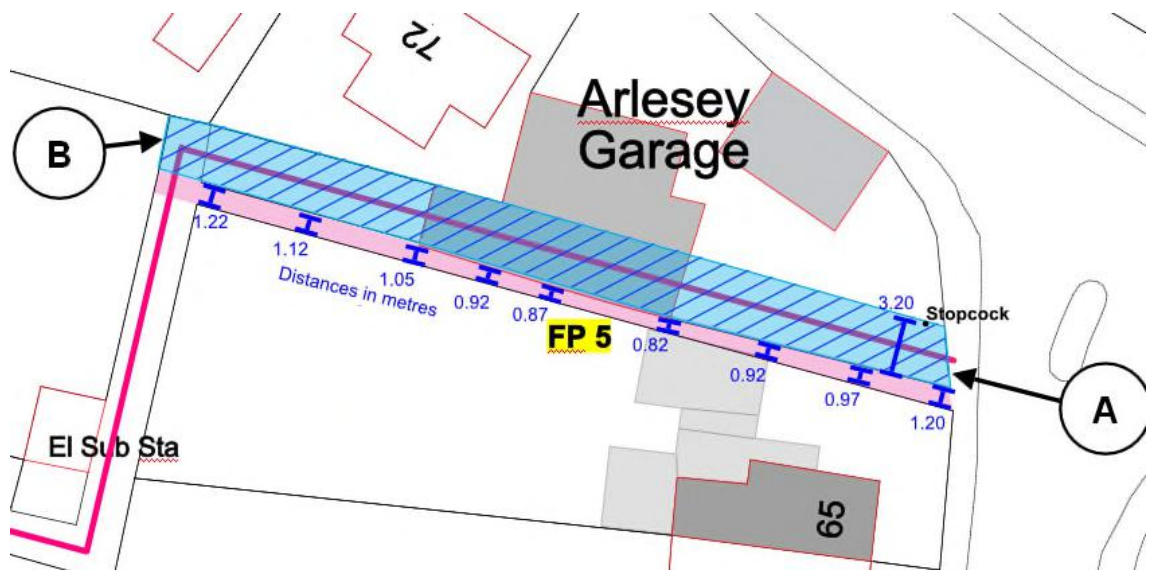


Extract from the 1977 1:2,500 Ordnance Survey map (4<sup>th</sup> Ed.)

The Garage is shown significantly extended over and into the previous access track to the field. (arrowed)

The track to the rear of No.72 House Lane is shown as a separate land parcel (also arrowed).

6. The centre-line of Footpath No. 5 is recorded on the Definitive Map as running along the centre of the historical access track and thus outside the current alley way; instead running through the Arlesey Garage and forecourt and within the rear garden of No. 72 Stotfold Road. Consequently, even if it can be proved that the enforceable width of the footpath is less than the width of the historic access track, enforcement action would still be required to make the footpath open and available for public use.



Measured widths of eastern portion of Footpath No. 5 showing the centre-line of the footpath

7. The issue of the narrowness of Footpath No. 5 was previously addressed in 2000-2001 by the former Bedfordshire County Council when it made a public path diversion order to move the legal line of the footpath out of the Garage on to the alleyway. At that time the County Council considered the footpath to be narrower and didn't include the alleyway. The *County Council of Bedfordshire (Arlesey: Part of Footpath No. 5) Public Path Diversion Order 2001* was made in March 2001 but received objections from a number of local and national walking

groups. For reasons unknown, the order was not forwarded to the Secretary of State and instead was informally abandoned without resolving the issue.

8. The usable width of Footpath No. 5 along the alleyway connecting House Lane to Chase Close varies between approximately 0.82 and 1.22 metres (see above plan) making it impossible for pushchairs or wheelchairs to pass each other or oncoming walkers. However, it is a functional width for unidirectional traffic. The narrow section extends from point A on House Lane for approximately 44 metres to the dog-leg and wider alleyway at point B adjacent to Chase Close.



9. To increase the width of the alleyway would require either the demolition of the boundary wall and outbuilding (garage) of No. 65 House Lane or the demolition of forecourt wall, extension to the Arlesey Garage and removal of the trees, rear fence and garden shed of No. 72 Stotfold Road. No. 65 House Lane is an innocent party in this issue: the obstruction being caused by the southwards extension of the Arlesey Garage in the c.mid-1960s, see photographs below.



Photo taken in possibly the 1950s.

A single-story garage with one work bay



Photo taken in c.1970s

Redevelopment to a two-story building with two work bays. The apex of the original building is marked by the rendered surface.



(c) Google Street View

Photograph taken in July 2016

Showing further development of a second story above the second work bay.

10. Given the historic nature of the obstructions, the case officer consulted on the proposed width reduction of the legal width of Footpath No. 5 to the current width of the alleyway. However, the Arlesey Town Council and the local ward member, Cllr. Richard Wenham have both requested that the proposed width reduction should retain a greater width than the alleyway, so that if the Garage were ever redeveloped, a wider footpath could be recreated. The Town Council's and local member's requests are included at paragraphs 36 and 40 below and a plan of the extra width required is shown at Appendix C.

### Legal and Policy Considerations

11. The legal and policy considerations of this application and of the Arlesey Town Council's request for a greater width are discussed at Appendix B, and summarised below.



### Validity of the Definitive Map and duties of the Council

12. Section 56 of the Wildlife and Countryside Act 1981 provides that the Definitive Map and Statement are conclusive evidence at law of the status, position and width of any public right of way recorded on it. The Statement would normally be used to define the width but in this case no width is recorded. Consequently the historic width of the 1937 agricultural access track (4 - 4.5 metres) has been used to establish the likely width for the footpath. Schedule 12A to the Highways Act 1980 does provide a backup by specifying minimum and maximum widths of 1.0 and 1.8 metres respectively for a non-field-edge footpath where a width cannot be proven. Using this maximum width of 1.8 metres would include very little of the alleyway as the legal line of the footpath would run almost in its entirety through the Garage, forecourt, and the rear garden of No. 72 Stotfold Road.

### Enforcement of a right of way

13. Section 130 of the Highways Act 1980 imposes a duty on the Council, as the Highway Authority, to assert and protect the rights of the public to pass and re-pass along all public highways and provides a range of legal mechanisms by which a variety of different types of obstruction can be removed under Sections 143, 149, 154 and 137 of the Act (see paragraphs B.21 *et seq.*)
14. Any enforcement action would require notice to be served on the land owners specifying what was required to be removed and by when. The recipients of the notices could, for certain obstructions, appeal to the Magistrates' Court. If the obstructions were not removed the Council could (depending on the type of obstruction) either then enter the property to remove the obstruction, apply to the Magistrates' Court for a court order to do so, or seek to prosecute the owners for failing to remove the obstructions.

### Central Bedfordshire Council's Policy

15. The Council's Rights of Way Enforcement Policy dictates how the Highways Act 1980 should be applied to those rights of way that are obstructed. Under the policy the Council is able to waive the requirement that an obstructed path be open before processing an application. The Council is required to act in a reasonable and proportionate manner when considering its actions. This is especially so as the obstructions are historic in nature and have not been imposed by the current owners of the land in question.

### The Proposed Extinguishment

16. Sections B.10 – B.15 of Appendix B consider the legislative tests of Section 118 of the 1980 Act which is the discretionary power of the Council to stop up some or all of a public path. The essential criteria of Section 118 are:
  - a. That it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, and
  - b. That the Secretary of State or Council are satisfied that it is expedient to confirm an extinguishment order having regard to the extent that the path

is likely be used by the public (if not stopped up) – ignoring any temporary obstructions - and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way.

17. The term *expedient* allows the Council to consider the impact of the proposal and the path on both the users and owners of the land as well on whether it is appropriate to enforce a greater width or maintain the historical status quo.
18. When all factors are considered, I consider it is expedient to maintain the current status quo of this footpath and to seek the extinguishment of the entire section of historically obstructed footpath, retaining the currently used, if somewhat narrow, alleyway.

### Case law

19. There are two significant judgments relating to stopping up obstructed footpaths: these are the *Ashbrook* and *Send* cases at paragraphs B.16 and B.19 respectively. I do not consider either case is directly applicable to this application and would not prevent the Council from making or confirming an extinguishment order.

### **Land Ownership**

20. The current width of the alleyway between points A-B is unregistered, although it has a caution against it by Eastern Power Networks owing to the electricity cabling laid beneath the alleyway.
21. The curtilage of Arlesey Garage under Title BD306566 shows that the extent of the ownership includes the historic section of agricultural access track.
22. The curtilage of No. 72 Stotfold Road also includes the extent of the historical track to the rear of the property and was recorded as doing so in February 1988.
23. The curtilage of No. 65 House Lane is unregistered. The owner, Mrs. Taylor, inherited the house from her father who lived there in the c.1950s and his father before him. She stated that her father owned the access track as part of the property but was not concerned when the Garage encroached over the access track in the 1960s.
24. Within the errors and constraints imposed by the scale of historic mapping (25":1 mile and 1:2,500) it is unclear whether any of the historic access track has been encroached upon by No. 65 House Lane. What is clear, though, is that the garage and the rear garden of No. 72 have both encroached significantly over the access track.

### **Options for Consideration**

25. This report proposes and recommends that the majority of the width of the footpath between points A-B be extinguished to leave just the width of the existing alleyway which varies between 0.82 and 1.22 metres in width. No works would be required to achieve this result.



26. Arlesey Town Council has, however, requested that a greater width (2.0 metres) be retained. The Town Council had also originally requested that the full 2.0m width of the retained footpath be enforced to either side of the physical extent of the Garage building and opened up for public use and the differing ground levels adjusted. The Town Council considers that the cost of any works should be paid for by the owners of the land. The enforcement aspect of this request has subsequently been withdrawn.
27. If an order is confirmed for the retention of a 2 metre wide footpath and the Central Bedfordshire Council considers it expedient to enforce the legal width, with the exception of the Garage building itself, the Council will have to serve formal notice on the owners of No. 72 Stotfold Road and the Arlesey Garage.
28. The obstructions that would need to be removed are:
- i. Approximately 18 metres of low (approx. 1 metre high) brick wall alongside the forecourt
  - ii. Approximately 11 metres of low brick wall with panel fencing above to the rear of No. 72 Stotfold Road
  - iii. Approximately 1 metre of 2 metre high brick wall to the rear of No. 72 Stotfold Road
  - iv. A large 29 year old ornamental cherry tree and two elder trees and miscellaneous shrubs within the rear garden of No. 72 Stotfold Road
  - v. A garden shed within the rear garden of No. 72 Stotfold Road
  - vi. Possibly other miscellaneous garden material from behind the fence of No. 72 Stotfold Road.
  - vii. Additionally the tarmaced forecourt of the Garage would need to be lowered to the level of the alleyway. Similar work may be required for the ground level at the rear of No. 72 Stotfold Road.
29. The owners of No. 72 can appeal to the Magistrates' Court over the requirement to remove trees and any miscellaneous deposits (including surfacing/paving) under Sections 154 and 149 of the 1980 Act respectively. If the Court refuses the appeal it can direct the obstruction to be removed by the Council.
30. If the owners of the Garage and No. 72 do not remove the obstructing walls, fence and shed within the times specified in the notice served under Section 143 the Council can either undertake works to remove the obstructions, or can seek to prosecute the owners of the obstructions in the Magistrates' Court under Section 137ZA of the Act.

## **Consultations**

31. Mr. Chalkley, the owner of Arlesey Garage, has been consulted on the proposal and on the Arlesey Town Council's request for a 2 metre width. In a letter, dated 3 May 2017, Mr. Chalkley stated:

*"... You have asked me to give my reasons why I appose the application to widen the footpath to two metres in front and behind the garage.*

- 1. The doors into the building will be obstructed.*

2. *Removal of fence and trees in garden of 72 Stotfold Road will compromise the structure of the building.*
3. *The stopcock serving water main to properties in House Lane is located in proposed footpath and would require removal.*
4. *Arlesey Town Council are agreed to leave footpath as it is."*

32. With regard to point 3 Mr. Chalkley is of the opinion that the works to remove the trees and boundary wall would be sufficient to compromise the structural integrity of the Garage's extension to the extent that the entire structure would require demolition. Whilst the extension does look slightly decrepit, I cannot comment on its resilience to the ground works required to open up the footpath.



33. Mr. and Mrs. Kirwan, the owners of No. 72 Stotfold Road, have been consulted on the proposal and on the Arlesey Town Council's request for a 2 metre width. In a letter, dated 5 April 2017, Mrs. Kirwan outlined the history of her property and of the Garage as she knew it, stating:

*"...In 1948 Mr Pyman purchased the Garage and house. When the new development (Chase Close and The Poplars) was built, Mr Pyman built a low wall, his family recall that he said 'he had to leave a three-foot width for the footpath' which he did. (This wall still forms the boundary of our property). During this period of ownership, Mr. Pyman extended the garage, his family said he had building regulations for this. In January 1985 the garage and house were sold to Mr. Gunn, who divided the two buildings. He sold the house... in January 1986 and it remained empty until my husband and I purchased the house in December 1986.*

*We registered the land at the time of purchase, we were aware of the footpath running behind our property and there was no condition in our purchase agreement regarding any right of way over our land. The fact that Mr Pyman and Mr Gunn had been allowed to extend the garage, forming a narrower footpath, plus, the fact that our garden boundary is also in line with the garage wall, leads me to believe that the three-foot rule was adhered to and that the land gained was legally belonging to the property. Furthermore, the permission for the building work lies with the County Council, who would have also agreed to the width of the footpath.*

*I would like to say that I cannot see what positive outcome would be achieved in the local authorities requesting this piece of land for a wider footpath, especially because the footfall on the existing one is low. We have lived in this property for over thirty years, the existing boundary wall has been in place for at least fifty years. I would suggest this section of land in dispute, is classed as Excepted Land. It has two three mature trees, a patio and a workshop on it, plus nesting Wrens, Blackbirds, Wood Pigeons and Bumblebees. I feel the [Town] Councils pursuit to*

*claim this section of land is a waste of time and public money, not to mention the distress caused to our family.”*

34. In response, the process of mapping public rights of way did not start until the early 1950's, with the Draft Map of Public Rights of Way being published in April 1953 and the first Definitive Map and Statement in March 1964. This was shortly before the possible construction of the Garage extension. Whilst planning consent is required prior to development taking place, such consent does not remove the additional legal requirements to stop up or divert public rights of way affected by the development before that development takes place. In the 1960's and 70's liaison between the various district councils and County Council over planning and rights of way issues was poor: numerous incidences of buildings being built over the legal lines of footpaths date from this period. Additionally, the rights of way question on property searches (Form CON29) has only been compulsory since 4 July 2016. Prior to that date the optional question was not always asked and many owners (such as the Kirwans) are unaware that a public right of way passes through their garden or house until they are contacted years later by the Council. Moreover, fencing part of a right of way into a garden does not extinguish that right, instead creating an unlawful obstruction to the highway.
35. Mrs. Taylor, the owner of No. 65 House Lane has discussed the issue in a number of telephone calls to the Senior Definitive Map Officer. She stated that her father owned the house originally and that he owned the access track to what was originally fields where Chase Close is now situated. He had not objected to the encroachment of the Garage on to the track. This would have been shortly after they moved their caravan out from the end of the garden along the track in the early 1960's. Mrs. Taylor has stated that her stopcock is situated within the Garage's forecourt at what would have been the historic northern boundary of the access track.
36. Arlesey Town Council was consulted and stated in an e-mail, dated 21 December 2016,
- “...The Town Council considered the proposed reduction of Arlesey Footpath No. 5 at its meeting held 20<sup>th</sup> December 2016, and resolved to OBJECT on the basis that any future redevelopment of Arlesey Garage would enable the path to be reinstated to its original width. The Town Council is aware that users of the path in its current state complain of its width being far too narrow. Whilst the Town Council is not suggesting that the Garage be demolished, it is mindful that at some point in the future the Garage and site may be redeveloped. In this event, the Town Council would wish to see a planning condition applied to ensure that the footpath is widened in order to re-establish, as closely as possible, the defined legal width...”* The area subject to be enforced is shown on the plan at Appendix C by red shading with the obstruction caused by the main Garage building shown in green.
37. Following a later site meeting with the Senior Definitive Map Officer, the Town Council stated in a further e-mail, dated 9 March 2017,
- “...The Town Council would be agreeable to the reduction in width of the highway and increase of the footpath by 2 meters, providing that a 2 meter*

*widening of the usable width of the footpath to the front and rear of the current building is achieved at the garage owner's own cost including the removal of trees, repositioning of fence of 72 Stotfold Road and attaining the appropriate ground levels. The deeds of the property should record the existence of a 2 meter footpath in its entirety, so as to preserve and protect the reinstatement of the full 2 meter width at the point of any future redevelopment..."* The Parish Clerk also confirmed that "...You are correct in your assumption that ATC would indeed object to an order to narrow the footpath to the current width of the alleyway ..."

38. Further to correspondence sent to the Town Council by Mr. Chalkley, the Town Council reviewed its previous resolution on Footpath No 5 at a meeting held on 18 April 2017. The Town Council has now stated that it

*"...was informed that 72 Stotfold Road is held under a separate freehold to the Garage site, and given that 72 is not due to change ownership in the near future, coupled with the fact that 72 may have already established boundary rights at Land Registry (as we are locally informed), the Town Council's previous position that the path be made wider to the front and rear of the garage is obviously unachievable. Taking this into account, and also the effect that moving the wall to the front of the garage would have on access to the garage, the Town Council reviewed its position and resolved that it would not seek the enforcement of short term action as previously requested, but in the event of any future re- development of the Garage site or 72 Stotfold Road a reinstatement of the 2 meter width would be required..."*

The Town Council also reiterated that it would object to the proposed width reduction.

39. In response – any width of the footpath that is obstructed would remain an unlawful obstruction. The council cannot fetter its duties under the Highways Act 1980 by issuing any guarantee not to enforce the full width of route at a later date: indeed it could be compelled to do so by a court order under Section 130B of the Act.
40. The local ward members were consulted. Cllr. David Shelvey stated in an e-mail that *"...I have no problem with this..."* Cllr. Richard Wenham stated an e-mail that *"...I am not convicted[sic] of the need to make this change. Just because a structure has been (illegally) constructed on part of a PROW does not in my view mean it should be legitimised. At some point in the future there may be an opportunity to return the path to its correct width over its full length. We should certainly not further restrict the width over the blue area shown on the map ..."*
41. In response – any order which leaves part of the order route obstructed is likely to be fraught with legal difficulties and benefits nobody. The proposed inclusion of part of the Garage within the order route in order to secure a greater width at some unknown date following some future redevelopment of the Garage is a tenuous reason. It would be much better to ensure the order route is not obstructed by a building and, if the Garage is redeveloped at some point in the future, to specify as a planning condition at that time that space be made for an extra width of footpath to be dedicated and set out prior to the redevelopment commencing.

42. The Chiltern Society and Ramblers were consulted but have not responded.
43. British Telecom, National Grid (gas), UK Power Networks, and Anglian Water were consulted as statutory undertakers. Anglian Water did not respond. National Grid has stated it has no apparatus and therefore no objection to the proposal. Similarly, BT Openreach has stated it has no objection to the order being made.
44. UK Power Networks has stated *"...I am a little concerned by this notice as we have high voltage and low voltage underground cables in this path that provide supply to a large part of Arlesey. Any reduction in width will have an adverse effect on our ability to maintain the cables or make necessary fault repairs. It may also create a safety issue to the adjoining properties and their owners or people working there, i.e. fencing contractors, etc..."*
45. Following reassurance that the alleyway was not being narrowed beyond its current width UK Power Networks subsequently stated: *"...Based on your information below I will withdraw the objection. Can you please forward a copy of the amended extinguishment order clearly stating our rights so that we can add it to our files please. The replacement cabling has not yet been done due to resourcing problems but, hopefully, this will be done early in the new year. I have copied in our Project Manager for this work... who can liaise with you directly regarding timings for the work and future resurfacing..."*

### **Reason for Decision**

46. Arlesey Footpath No. 5 is obstructed between points A-B by a variety of walls, fences, trees, shed and the southern work bay of Arlesey Garage and has been so for potentially 50 years.
47. Consequent to a CON29 property search an application has been made to extinguish the obstructed section of footpath whilst retaining the unobstructed but narrow (0.82-1.22 metre wide) section along the alleyway between House Lane and Chase Close.
48. Arlesey Town Council has requested that a greater width of 2.0 metres be retained so that this greater width can be reclaimed if the Garage is demolished in the future.
49. The recommendations in this report would not physically alter anything on the ground but would merely change the legal record for Arlesey Footpath No. 5. Arguably enforcement action could be taken to enhance the route of the footpath and thus increase its suitability and usability but this is considered to have a disproportionate effect on the affected landowners.
50. This report consequently proposes that the Town Council's request should be not granted and that the application should be approved as made.

### **Council Priorities**

51. The retention of the existing narrow footpath weighs the needs of local residents against the effect of enforcement action on local land and business owners. By keeping the status quo it perpetuates the inconvenience experienced by those

with mobility scooters and pushchairs but supports landowners who have lived with this network anomaly for half a century. The Committee has to balance the interests of local owners and residents and the public at large in determining how to act in a responsive but proportionate manner. This proposal as set out therefore meets the following Council priorities to varying degrees:

- Delivering great residents' services
- Protecting the vulnerable, promoting wellbeing
- Creating stronger communities
- An efficient and responsive Council

### **Corporate Implications:**

### **Legal Implications**

52. The legal line of Arlesey Footpath No. 5 is currently unlawfully obstructed by a variety of items (trees, fences, walls, garden shed and the Garage's southern work bay). The Council has a legal duty to seek the removal of these, or alternatively to use its discretion to seek the extinguishment of the obstructed sections.
53. If the Council makes a public path extinguishment order, as recommended, it is likely that the Town Council will object. If any objections are made and not withdrawn the Council cannot confirm the order as an unopposed order but instead would have to consider whether to forward the order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. The Secretary of State appoints an independent Inspector to hear the objections and to confirm, modify or not confirm the order.
54. If the proposed order is not confirmed the Council will then have to address what it does with the obstructions within the full 4-4.5 metres width of the footpath.
55. If the Committee resolves to retain a greater width than the width of the current alleyway, then enforcement action may need to be taken at a later date by serving notice on the owners of the land and potentially arguing the case for enforcement in the Magistrates' Court.
56. There is the potential risk that if any appeal to the court is successful the Council may not be able to undertake the enforcement action to open up the footpath to its legal width.

### **Financial Implications**

57. Mr. Chalkley, the current owner of Arlesey Garage has confirmed in writing he wishes to be invoiced for Mr. Gunn's application as part of a private agreement with the previous owner. Consequently the Council's administration costs of approximately £2048 up to and including the making of the recommended order and the cost of advertising the making and any confirmation of the recommended order will be recharged to him if a public path extinguishment order is made as per the current recommendation.

58. However, if the Committee resolves that no order should be made the current legislation (Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993 (S.I. 1993/407), as amended) prevents the Council charging for any administration costs already incurred: these costs would be borne by the Highways Assets Team's budget.
59. Similarly, if the Committee resolves that the an order should be made to retain a greater width than that applied for, it is my opinion that no charge should be made to the applicant. This is because such an order would be contrary to the applicant's interests as it could detrimentally affect the use of the Garage and may lead to future enforcement issues. Consequently, in such a case, the administration and advertising costs would again be fully borne by the Highways Assets Team's budget.
60. Whatever the width of footpath retained in the public path extinguishment order, it will attract objections from either the Town Council or the effected landowners. The order, if not abandoned, would need to be forwarded to the Secretary of State with a supporting case bundle and further submissions as part of the process of either written representations, a public hearing or a public local inquiry. These administrative costs, including the potential hire of a local venue, would be borne by the Council and could cost between £500 and £2000 which would be paid out of the Highways Assets Team's budget.
61. If an order for a greater width that the current alleyway is made, the Council may need to attend the Magistrates' Court to defend any enforcement notices issued and to potentially prosecute the obstructors. If the Council was successful, its costs of approximately £2000 would be reimbursed by the losing parties. However, if the Council lost it would be liable for the winning parties' legal fees and court costs – which could exceed several thousand pounds. These costs would need to be paid from the Highways Assets Team's budget.
62. If enforcement action was taken and the Council chose to undertake the clearance work itself, it would have to initially pay its contractors from the Highways Assets Team's budget and then seek reimbursement from the land owners for the cost of the works. The costs of the works including disposal of waste/arising would be approximately £2000.

### **Equalities Implications**

63. Central Bedfordshire Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
64. Arlesey Footpath No. 5 currently has a restricted width of between approximately 0.82 and 1.22 metres. This does make it difficult (but not impossible) for double buggies and mobility scooters to use the route. It does mean though that pedestrians have to defer to approaching users already on the path.

65. The proposal would not change this situation but would remove the public right of way from the adjoining properties which currently have the prospect of enforcement action being taken against them.
66. The Town Council's alternative proposal of retaining a greater width and having enforcement action taken to open the route of the footpath up across the rear garden of No. 72 and the forecourt of Arlesey Garage would marginally benefit the public as the narrow section of the footpath would be reduced from approximately 44 metres to 18 metres in length – thus marginally improving the passage of buggies and mobility scooters. This though would have a detrimental effect on the owners of these properties.

### **Community Safety Implications**

67. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report. The alleyway is narrow and does not allow a great deal of space for people to pass each other by. This could have safety implications if walkers have aggressive dogs. The proposal would not change the current situation however, but would merely maintain the status quo.
68. The Town Council's alternative proposal to provide a wider route through enforcement action would provide more room for walkers, buggies and dogs – although a narrow, 18 metre long, section would remain in the middle of the alleyway.

### **Corporate Risk**

69. Arlesey Footpath No. 5 has been historically obstructed for over 50 years. Whilst the present owners of No. 72 Stotfold Road were unaware of the footpath when they bought their property, the new owner of Arlesey Garage was aware that the building obstructed the footpath. The new owner was, however, advised by the Council that an order removing the footpath from the building could be made but that confirmation of that order was never a certainty.
70. This report considers that enforcement of such a historic obstruction is unreasonable and not expedient owing to the passage of time – although legally it could be done. Moreover, any enforcement action would not remove all the obstructions unless the demolition of part of the Arlesey Garage was also considered.
71. The enforcement of the historic legal line of the footpath is likely to cause some degree of press interest: this is unlikely to be sympathetic to the Council's cause.

### **Conclusion and Next Steps**

72. The eastern end of Arlesey Footpath No. 5 does not have a recorded width, instead its width of 4-4.5 metres has been inferred from the historic agricultural access track that it ran along. However, the majority of the width of Arlesey Footpath No. 5 has been obstructed by walls, trees, fences and the extension to



Arlesey Garage since this was built in the c.mid-1960s. The remaining width of the footpath, between approximately 0.82 – 1.22, metres is usable but does not allow prams or mobility scooters and pedestrians to pass each other.

73. Prior to the sale of the Arlesey Garage the vendor submitted an application to stop up that part of the width obstructed by the Garage, forecourt wall and wall, trees and shed situated in the rear garden of the neighbouring property (No. 72 Stotfold Road). This report proposes that the application to be approved and a public path extinguishment order made to stop up the majority of the width of the footpath: retaining just the width contained within the existing alleyway.
74. Arlesey Town Council has objected to the proposal, instead wanting a greater width of 2 metres retained so that this can be reclaimed if the Garage was ever demolished.
75. If no extinguishment order was made/confirmed the Council would have to review what action it should take in light of the obstructed nature of the footpath.

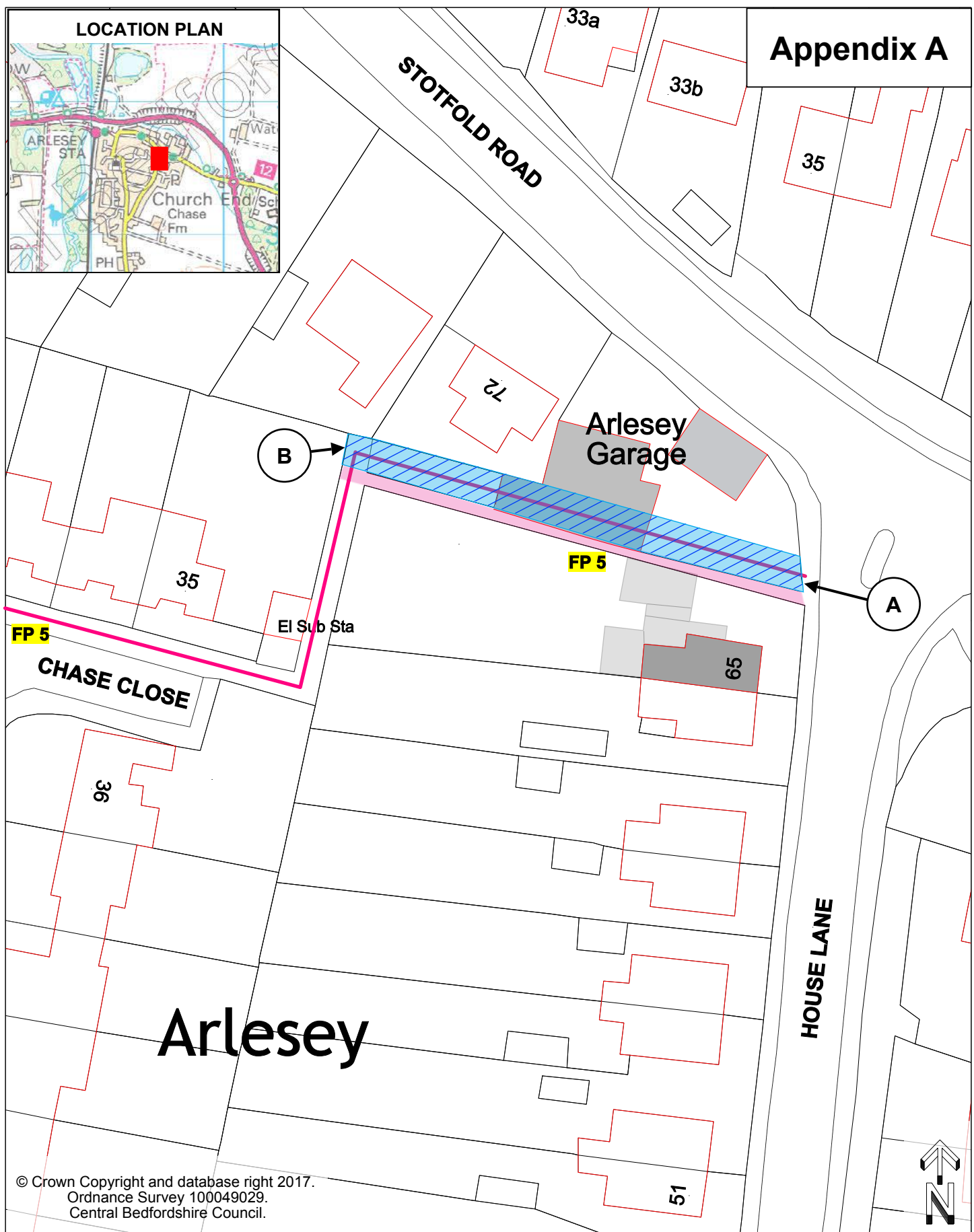
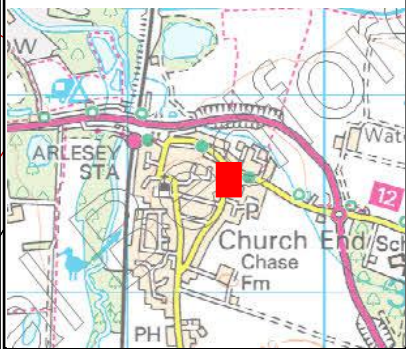
## **Appendices**

Appendix A – Plan of proposed extinguishment

Appendix B – Legal and Policy Considerations

Appendix C – Alternative proposal by Arlesey Town Council.

LOCATION PLAN



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Ordnance Survey 100049029.  
Central Bedfordshire Council.

HIGHWAYS ACT 1980

**Proposed extinguishment of part of the width of part of  
Arlesey Footpath No. 5 at Arlesey Garage**



Width of FP 5 to be stopped up X  Y

Width of FP 5 to be retained X  Y

Unaffected footpath 

Date: 09 July 2015  
Scale: 1:500@A4

### Legal and Policy Considerations

#### Validity of the Definitive Map and duties of the Council

B.1. Section 56(1) of the Wildlife and Countryside Act 1981 states:

*“(1) A Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely-*

*Where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map...*

*(b)-(d) (omitted)*

*(e) Where by virtue of the foregoing paragraphs the map is conclusive evidence, at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width shall be conclusive evidence as to the position or width thereof at that date...”*

B.2. Under normal circumstances the Council would rely on the Definitive Statement to provide particulars as to the precise position and width of the footpath. Where a width is not recorded the Council has to try to use other evidence, such as the likely historic width based on map evidence to ascertain a legal width. Unfortunately the Definitive Statement does not specify a width for the section of footpath between points A-B.

B.3. The centreline of Footpath No. 5 runs on the northern side of the forecourt boundary wall, inside the Garage's extension (second work bay) and inside the rear boundary fence of No. 72 Stotfold Road. The historic Ordnance Survey maps (see extracts in the main report) show that the access track has evolved over time – with the width of the footpath being presumed to be the physical extent useable in 1937.

B.4. Section 1 of Schedule 12A to the Highways Act 1980 provides that where the width of a highway is proved that width will be both the minimum and maximum width. In any other case the minimum width of a footpath which is not a field-edge path is 1 metre and the maximum is 1.8 metres. I have used the historic width of the access track to indicate the maximum width of the footpath which would include the present alleyway rather than the unproven maximum width of 1.8 metres which would include very little of the alleyway and which would run through the Garage and rear garden of No. 72 almost in its entirety.

B.5. Section 130 of the Highways Act 1980 (*“the 1980 Act”*) puts Central Bedfordshire Council, as the Highway Authority, under a duty to *“...assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority...”*. The High Court case of *Regina v Surrey County Council (ex parte Send Parish Council)* 1979, mandates that the Council, as highway authority, carries out its duty in a reasonable and

appropriate manner to facilitate use of the route by those legally entitled to do so. Central Bedfordshire Council has discretion in how and the extent to which it discharges its duty. Currently members of the public cannot use the majority of the width of the footpath and the Council therefore needs to take action. The Council can either enforce the legal width where it is obstructed or it can reduce the legal width to a width that is not obstructed having regard on the effect that such a width reduction would have on the use of the path by the public.

- B.6. Section 130(6) of the 1980 Act also specifies that where a Highway Authority receives representations from a parish council that a right of way under its control has been unlawfully stopped up or obstructed the Council has a duty to take proper proceedings accordingly to resolve the issue. Arlesey Town Council has made representations to Central Bedfordshire Council that Footpath No. 5 is obstructed and has provided what it deems to be an acceptable means of resolution, see main report.

#### Central Bedfordshire Council Policy

- B.7. Central Bedfordshire Council's *Rights of Way Enforcement Policy* defines the Arlesey Garage as a “*permanent feature*”, being an operational commercial building. It is unsure whether the Garage can also be classified under the policy as a “*long-lived feature*” as these are defined as being constructed before 1 March 1964 – the extension being built sometime in the mid-60’s. The forecourt wall and the garden shed, trees and garden fence to the rear of No. 72 Stotfold Road are classified as “*temporary features*”.
- B.8. Section 3 of the Enforcement Policy relates to obstructed paths subject to an application for a public path order or definitive map modification order which would resolve the obstruction issue. It states:
- 3.1 *Keeping paths open and available for public use is a general duty of both the landowner and Central Bedfordshire Council . The execution of the Council’s duty, however, must be reasonable and proportionate. Whilst there is no justification in directly linking the presence of obstructions on an existing path with the processing of an application to divert or extinguish it, the presumption shall be that all paths that are the subject of an application will be open and available for public use until such time as an extinguishment or diversion order is made and confirmed (and where necessary, certified).*
  - 3.2 *The decision as to whether enforcement action is appropriate, and whether an application to divert or to extinguish a path is appropriate, should be made by the Rights of Way Team Leader on the merits of each individual case.*
  - 3.3 *The Case Officer, in consultation with the Rights of Way Team Leader, may temporarily waive the requirement that a path should be open and available for public use where he or she deems it appropriate having regard to all the circumstances of the particular case.*

3.4 *Where the legal line of the path is obstructed by temporary structures that can be removed the applicant will be required to open up the path on the legal line until an order has been confirmed and, where necessary, certified.*

B.9. The above policy requires that the execution of the Council's duty under Section 130 of the 1980 Act must be "*reasonable and proportionate*". As the footpath is useable along some of its width, but not the full width, it is not considered reasonable to require that the temporary features (wall, trees, fence and shed) should be removed pending the making and confirmation of the proposed extinguishment order which would obviate the need for enforcement action. The waiving of the requirement to remove the obstructions has been authorised by the Senior Definitive Map Officer in consultation with the Highway Assets Team Leader.

#### Extinguishment of public paths

B.10. Section 118 of the Highways Act 1980 enables Central Bedfordshire Council, as the Highway Authority, to extinguish public footpaths, bridleways, and restricted byways and is paraphrased below:

- (1) *Where it appears to a council as respects a footpath, bridleway, or restricted byway in their area... ..that it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, extinguish the public right of way over the path or way...*
- (2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way...*
- (3) - (4) (omitted)
- (5) *Where... ..proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a... public path diversion order... then, in considering-*
  - (a) *under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or*
  - (b) *under subsection (2) above to what extent (if any) that the path or way would apart from the order be likely to be used by the public;**the council or secretary of state, as the case may be, may have regard to the extent to which the... .. public path diversion order... ..would provide an alternative path or way.*

*(6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.*

- B.11. Before making an order under Section 118 the Council has to be satisfied that the section of path to be stopped up is no longer needed for public use. Were the entirety of the footpath open and available for use by the public it would be used and there would be occasions when the extra width would be necessary to allow two pushchairs or mobility scooters to pass. However, the section to be narrowed between points A-B on the plan at Appendix A is a straight line and users can wait safely at either end until convenient to pass. Convenience is different to need. I consider that the section of footpath to be stopped up between points A-B, whilst desirable, is not *needed* for public use.
- B.12. The Council also has to consider the expediency of the stopping up. In doing so, it has to consider the impact of the stopping up on the public use of the route and weigh this against the impact of enforcing the route on the current owners of the Garage and No. 72 Stotfold Road. As part of the expediency test the Council can consider whether enforcement action is in the public interest and is a reasonable and proportionate use of its power. I consider that it is expedient for the Council to stop up that part of Footpath No. 5 obstructed by the Garage
- B.13. Before the Council or the Secretary of State for Environment, Food and Rural Affairs confirms the order it, or he, must be satisfied that it is expedient to do so, having regard to the extent to which the footpath would be used. In considering this use any temporary circumstances preventing the public using the route must be disregarded. Whilst the garage itself can be considered a permanent feature, the forecourt wall and the trees and rear fence of No. 72 Stotfold Road are temporary and thus must be disregarded.
- B.14. The Council also has to have regard to the effect of the proposed extinguishment on the land to either end of the footpath. In practice the proposed extinguishment would not detrimentally affect the use of the right of way or the land to either end. The retention of a greater width would benefit the lands served by the path by improving access for buggies and mobility scooters and allowing people to pass these on the majority of the affected part of the route.
- B.15. If the footpath were open and available for public use across the forecourt and through the rear garden of No. 72, it is likely that members of the public would utilise this wider width to avoid having to squeeze past each other. It would also facilitate easier use of pushchairs and mobility scooters. This path – in its reduced width form – is used on a daily basis and would continue to be used irrespective of whether any stopping up of the obstructed width occurs. Disregarding the temporary obstruction, the reduction in width would detrimentally affect the public's use of the footpath. However, more complaints have been received by the Council about the surfacing of the path than its narrowness. Given the effect that opening up the footpath would have on the owners of the obstructed sections and the specific – but limited - benefit of a wider path I consider it would be expedient to stop up the obstructed portion of the footpath and thus confirm the order.



## Case law

- B.16. The case of *Ashbrook, R (on the application of) v East Sussex County Council* [2002] EWCA Civ 1701 (“*Ashbrook*”) concerned whether an order to remove a footpath from a farm building could be forwarded to the Secretary of State and whether doing so contravened the Council's own policies on applications relating to obstructed paths. Compounding the issue was the recent conviction of the landowners under Section 137 of the 1980 Act for obstruction of the footpath and the ongoing failure to remove those obstructions.
- B.17. The County Council (“*ESCC*”) had a policy whereby applications would not be processed if paths were obstructed unless “*the removal of the obstruction is not considered reasonably achievable*”. Schieman LJ. held that whilst the *ESCC* was correct in coming to the conclusion that the removal of the barn was not reasonable, the deliberate and persistent flouting of the law was something that should have been considered. It was not and neither were the judgments of the Magistrates’ Court and therefore the decision to forward the order to the Secretary of State was quashed.
- B.18. Central Bedfordshire Council’s Enforcement Policy, see above, permits an application to be processed even if the path is obstructed. Consequently this report’s recommendation is in accord with *Ashbrook* on policy issues.
- B.19. The case of *R. (oao) Send Parish Council) v Surrey County Council* [1980] HL QBD 40 P&CR 390 (“*Send*”) related to the actions of Surrey County Council in trying to extinguish an obstructed route and substitute for it a less convenient alternative – rather than enforcing the original line which was supported by Send Parish Council. In his judgment, Lane LJ. held that the County Council, in doing so, had acted in the interests of the obstructors and not in the interest of those who had a right to use the footpath and that no reasonable authority could have so acted if they truly had in mind the ambit of their duty under the Highways Act (of 1959).
- B.20. There are similarities between the *Send* case and Arlesey Footpath No. 5. However, I consider the extended period of obstruction of the footpath and the public’s ability to use the narrow unobstructed portion is sufficient to differentiate the two cases and to allow the Council to take what can be considered a reasonable and proportionate stance in stopping up the historically obstructed portion of the footpath.

## Enforcement of public rights of way

- B.21. There are a number of sections of the Highways Act 1980 relating to enforcement action and the removal of obstructions from public rights of way:
- A. Section 130(A) relates to the serving of notice on the Highway Authority by members of the public for obstructions. It specifically excludes buildings and any structure that can be used as a dwelling but does include trees and walls.

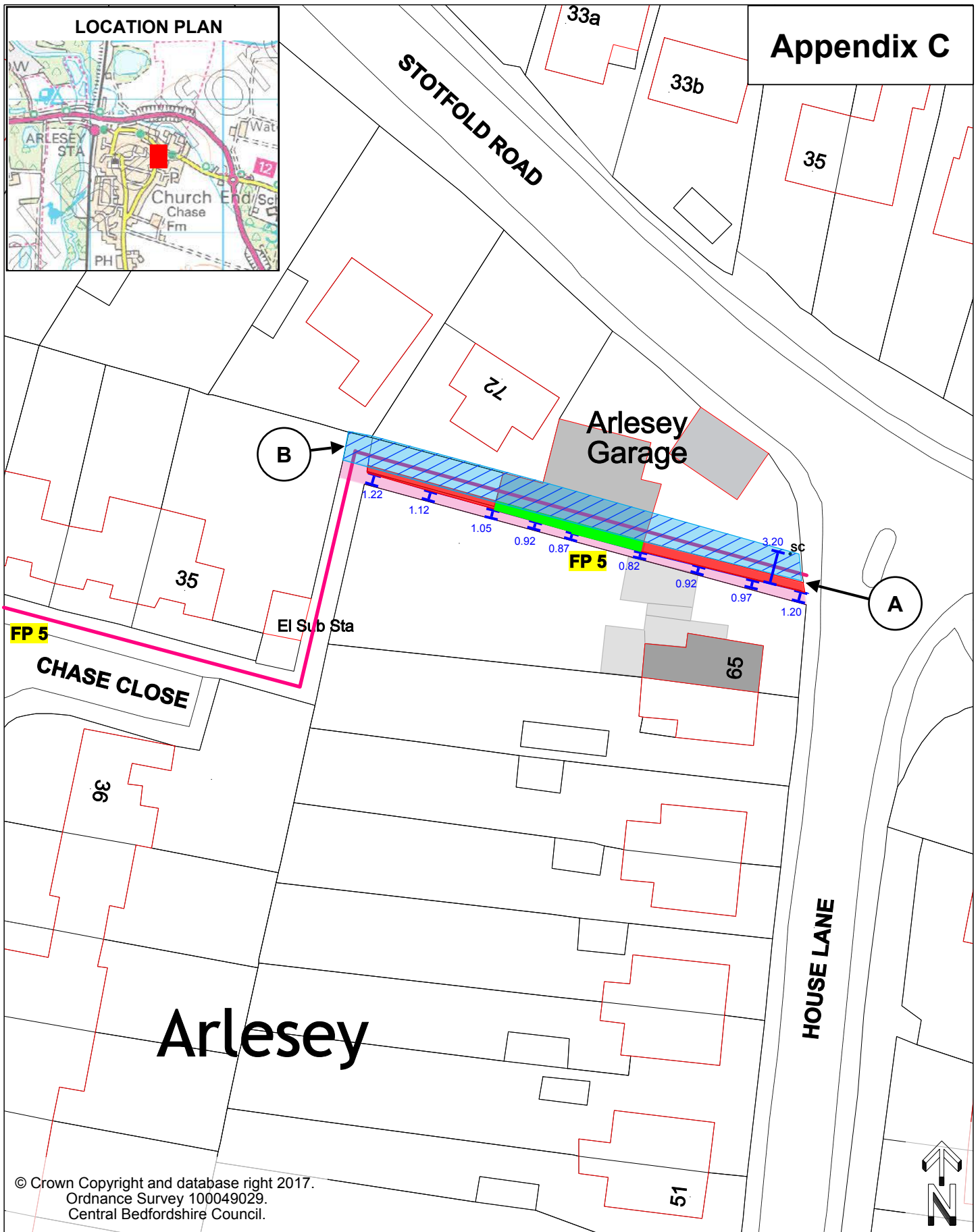
- Action under Section 130(B) is taken by the complainant in the Magistrates' Court which would direct the Council to take such steps as necessary to remove the relevant obstructions.
- B. Section 143 gives the Council the power to remove structures erected or set up on a highway. Structures include *"...any machine, pump, post or other object of a similar nature as to be capable of causing obstruction..."* and can be considered to include fences, walls and sheds. As proper buildings are not included within the definition it is unlikely that these are covered by this section of the Act but the garden shed would be included.
- Action under Section 143 would require serving of notice requiring the removal of the obstructions no sooner than 7 days hence. If no action is taken within one month of the notice being served the Council can act to remove the obstructions and seek recovery of the costs incurred from the owners of the obstructions.
- C. Section 149 permits the removal of "things" deposited on the highway. Whilst the nature of "things" is not defined, it can be assumed that these relate to miscellaneous materials (including surfacing/paving) rather than structures or buildings.
- Action under Section 149 would require serving of notice requiring the removal of the obstructions no sooner than 7 days hence. If no action is taken by the deadline, the Council can apply to the Magistrates' Court for an order empowering them to remove and dispose of the obstructions and seek recovery of the costs incurred from the owners of the obstructions.
- D. Section 154 enables the Council to serve notice on the owner of overhanging hedges, trees or shrubs to remove these if they endanger or obstruct the passage of users.
- Action under Section 154 would require serving of notice requiring the removal of the obstructions no sooner than 14 days hence. The recipient of the notice can appeal to the Magistrates' Court.
  - If no action is taken by the deadline and no appeal is made, the Council can take action to remove the vegetation in question and seek recovery of the costs incurred from the owners of the land.
- B.22. Section 137 is an additional power which enables the Council to prosecute any person for wilfully obstructing a highway. The erection of any structure and its subsequent maintenance constitutes a continuous offence. Additionally, Section 137ZA empowers the Court to order anybody convicted of an offence of wilful obstruction to remove the obstructions by a specified date.
- B.23. Prosecution is achieved by laying an information or complaint before the Magistrates' Court to the effect that:
- i. Footpath No. 5 is shown on the Definitive Map as running along the alleyway and has a width of approximately X metres (as specified in any prior confirmed stopping up order)

- ii. Part of the width of Footpath No. 5 is obstructed by specified items (walls, trees, fences, shed etc.)
- iii. That notice requiring the removal of the specified items has been served and expired and that these still obstruct the footpath and thus constitute a continuing offence.

# LOCATION PLAN



## Appendix C



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Central Bedfordshire Council.

### HIGHWAYS ACT 1980

## Proposed extinguishment of part of the width of part of Arlesey Footpath No. 5 at Arlesey Garage (Arlesey TC suggestion/request)

Central Bedfordshire

Width of FP 5 to be stopped up



Sections of FP 5 obstructed by minor objects



Unaffected footpath



Width of FP 5 to be retained



Section of FP 5 obstructed by building (Garage)



Date: 10 MAR 2017  
Scale: 1:500@A4

**TAB M**

**M. Development Management Committee Minutes**

## CENTRAL BEDFORDSHIRE COUNCIL

At a meeting of the **DEVELOPMENT MANAGEMENT COMMITTEE** held in Council Chamber, Priory House, Monks Walk, Shefford on Wednesday, 24 May 2017

### PRESENT

Cllr K C Matthews (Chairman)  
Cllr R D Berry (Vice-Chairman)

Cllrs M C Blair  
K M Collins  
I Dalgarno  
F Firth  
E Ghent

Cllrs C C Gomm  
K Janes  
T Nicols  
T Swain  
J N Young

Apologies for Absence: Cllrs Mrs S Clark

Substitutes: Cllrs D Bowater (In place of Mrs S Clark)

Members in Attendance: Cllrs Mrs A Barker  
Mrs A L Dodwell  
R Morris  
R D Wenham

Officers in Attendance:	Mr D Ager	Principal Highway Officer
	Mr M Allen	Planning Officer
	Mrs N Darcy	Senior Planning Officer
	Mr J Ellis	Planning Manager West
	Mr A Emerton	Senior Lawyer Planning, LGSS Law Limited
	Mr M Huntington	Principal Planning Officer
	Mrs C Jagusz	Committee Services Administrator
	Mr A Maciejewski	Senior Definitive Map Officer
	Mr L Manning	Committee Services Officer
	Mr S O'Connell	Highway Officer
	Ms J Self	Senior Planning Officer
	Mrs J Selley	Major Applications Manager

**PRIOR TO THE START OF THE MEETING ATTENDEES STOOD IN SILENCE FOR ONE MINUTE TO REMEMBER THE VICTIMS OF THE MANCHESTER BOMB ATTACK**

#### DM/17/1. **Chairman's Announcements and Communications**

The Chairman reminded Councillors and members of the public to silence their mobile phones for the duration of the meeting.



The Chairman informed councillors and members of the public that if the fire alarms sounded they should immediately vacate the building using the designated exits.

The Chairman advised that the meeting was being filmed and webcast.

The Chairman explained the procedure to be followed at the meeting when the Committee gave consideration to planning applications. He added that the Chairman had a second or casting vote.

DM/17/2. **Minutes**

**RESOLVED**

**that the minutes of the meeting of the Development Management Committee held on 26 April 2017 be confirmed and signed by the Chairman as a correct record subject to adding Councillor Blair's name to the list of those Members present.**

DM/17/3. **Members' Interests**

(a) **Personal Interests:-  
Member**

	<b>Item</b>	<b>Nature of Interest</b>	<b>Present or Absent during discussion</b>
Cllr Matthews	8	Knows public speaker	Present
Cllr Young	All	May have met applicants in his capacity as a former Portfolio Holder and as the current Executive Member for Regeneration	Present

(b) **Personal and Prejudicial Interests:-  
Member**

<b>Item</b>	<b>Nature of Interest</b>	<b>Present or Absent during discussion</b>
-------------	---------------------------	--

None declared.

(c) <b>Prior Local Council Consideration of Applications</b>			
<b>Member</b>	<b>Item</b>	<b>Parish/Town Council</b>	<b>Vote Cast</b>
Cllr Dalgarno	7	Stondon	No – not a member of the PC
Cllr Matthews	8	Marston Moreteyne	No – not a member of the PC
Cllr Dalgarno	10	Arlesey	No – not a member of the TC
Cllr Janes	11	Totternhoe	No – did not participate

**DM/17/4. Planning Enforcement Cases Where Formal Action Has Been Taken**

**RESOLVED**

that the monthly update of planning enforcement cases, as identified in the report where formal action had been taken, be received.

**DM/17/5. Planning Application No. CB/16/02972/FULL**

**RESOLVED**

that, in view of the concerns raised by the neighbouring residents of Priory View about ensuring that the community has a full understanding of the amended proposals, and in keeping with the requirements of the public sector Equality Duty, consideration of Planning Application No. CB/16/02972/FULL relating to the former Dukeminster Estate, Church Street, Dunstable be deferred until the next meeting of the Development Management Committee on 21 June 2017.

**DM/17/6. Planning Application No. CB/16/05229/OUT**

**RESOLVED**

that Planning Application No. CB/16/05229/OUT relating to land west of Bedford Road, Lower Stondon be approved as set out in the Schedule attached to these minutes.

**DM/17/7. Planning Application No. CB/16/05797/OUT**

**RESOLVED**

**that Planning Application No. CB/16/05797/OUT relating to Shelton Farm, Lower Shelton Road, Marston Moretaine, Bedford be approved as set out in the Schedule attached to these minutes.**

**AT THE CONCLUSION OF ITEM 7 COUNCILLOR WENHAM LEFT THE MEETING**

**THE COMMITTEE ADJOURNED AT 11.25 A.M. AND RECONVENED AT 11.37 A.M.**

**DM/17/8. Planning Application No. CB/16/00814/OUT**

**RESOLVED**

**that Planning Application No. CB/16/00814/OUT relating to land at Camden Site, Grovebury Road, Leighton Buzzard be approved as set out in the Schedule attached to these minutes.**

**AT THE CONCLUSION OF ITEM 8 COUNCILLOR MORRIS LEFT THE MEETING**

**DM/17/9. Planning Application No. CB/17/00492/FULL**

**RESOLVED**

**that Planning Application No. CB/17/00492/FULL relating to land at Chase Farm, east of High Street, Arlesey be approved as set out in the Schedule attached to these minutes.**

**DM/17/10. Planning Application No. CB/16/04384/REG3**

**RESOLVED**

- 1 that consideration of Planning Application No. CB/16/04384/REG3 relating to Lancotbury Close Amenity Land, Totternhoe be deferred until the next meeting of the Development Management Committee on 21 June 2017;**
- 2 that the applicant's representatives be requested to attend the above meeting in order to answer Members' queries.**

**DURING CONSIDERATION OF ITEM 10 COUNCILLOR MRS DODWELL LEFT THE MEETING**

**THE COMMITTEE ADJOURNED AT 1.26 P.M. AND RECONVENED AT 1.50 P.M.**

**DURING CONSIDERATION OF ITEM 11 COUNCILLOR DALGARNO ENTERED THE CHAMBER**

DM/17/11. **Planning Application No. CB/17/01844/FULL**

**RESOLVED**

**that Planning Application No. CB/17/01844/FULL relating to 1 Station Road, Blunham, Bedford be approved as set out in the Schedule attached to these minutes.**

DM/17/12. **The Determination of an Application to Reduce the Width of Arlesey Footpath No. 5**

The Committee considered a report of the Assistant Director Highways which advised of an application to reduce the width of Arlesey Footpath No. 5 at its eastern end where it passed within the curtilage of Arlesey Garage and the rear garden of No. 72 Stotfold Road. If the application was approved the retained width of the footpath would be that of the current narrow alleyway which had been formed as a result of the extension of the above properties over and into the estimated historical width of the footpath.

The Committee noted that the County Council of Bedfordshire (Arlesey: Part of Footpath No 5) Public Path Diversion Order 2001 was not directly related to the application before Members but it did require to be formally abandoned as it was considered erroneous and redundant.

Points and comments included:

- Based on the 1937 Ordnance Survey map the estimated width of the route of the original track was 4.0-4.5 metres wide.
- Approval of the application would leave only a footpath of between 0.82 and 1.22 meters in width (i.e. the width of the current alleyway).
- Whilst there was no statutory minimum width for a footpath the Council's own guidelines for new footpaths was two metres whilst the Disability Discrimination Act regulations required a minimum width of one metre.
- Concern was expressed by Members that the existing alleyway was too narrow to permit unrestricted access by wheelchair users, especially those using electric wheelchairs, and by those persons pushing a double buggy.
- Arlesey Town Council had objected to the proposed width reduction and required the retention of a greater width.
- Members expressed the view that the application for the Committee to formally reduce the width of the footpath to that of the existing alleyway

should be refused and an unobstructed width of 2.0 metres should be retained.

**RESOLVED**

- 1 that the submitted application to make a public path extinguishment order under Section 118 of the Highways Act 1980 to extinguish that part of the historically obstructed width of Arlesey Footpath No. 5 between points A and B, as shown on the map at Appendix A to the report of the Assistant Director - Highways, whilst retaining the unobstructed portion of the footpath that runs along the alleyway between House Lane and Chase Close with a variable width of between 0.82 and 1.22 metres, be refused on the grounds that such a reduced width is incompatible with the duty of the Highway Authority to consider and provide disabled access along the footpath;**
- 2 that the making of a public path extinguishment order under Section 118 of the Highways Act 1980 to extinguish part of the obstructed width of Arlesey Footpath No. 5 between points A and B, as shown on the map at Appendix A to the report of the Assistant Director - Highways, whilst retaining a width of 2.0 metres - which includes the unobstructed portion of the footpath running along the alleyway between House Lane and Chase Close - be approved;**
- 3 that the County Council of Bedfordshire (Arlesey: Part of Footpath No 5) Public Path Diversion Order 2001, which was objected to and never forwarded to the Secretary of State and is considered erroneous and redundant at this time, be formally abandoned.**

DM/17/13. **Site Inspection Appointment(s)**

**NOTED**

**that the next meeting of the Development Management Committee will be held on 21 June 2017.**

**RESOLVED**

**that all Members and substitute Members along with relevant ward representatives be invited to conduct site inspections on 19 June 2017.**

DM/17/14. **Late Sheet**

In advance of consideration of the Planning Applications the Committee received a Late Sheet advising it of additional consultation/publicity responses, comments and proposed additional/amended conditions. A copy of the Late Sheet is attached as an appendix to these minutes.

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**TAB N**

## **N. Pre-Order consultation responses**

## Adam Maciejewski

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**From:** Adam Maciejewski  
**Sent:** 04 January 2017 14:03  
**To:** Clerk to Arlesey Town Council  
**Cc:** Jon Want; Cllr Richard Wenham; Cllr David Shelvey; Cllr Ian Dalgarno; Andrew Gwillam  
**Subject:** RE: Proposed reduction of Arlesey Footpath No. 5

Dear Susan  
*[cc Cllr. Want and CBC ward members]*

Happy New Year!

Thank you for your e-mail. My apologies for the delay in responding: I have just returned from annual leave.

Cllr. Wenham has expressed a similar view to me late last year in wanting the legal width of the footpath retained. In responding to Cllr Wenham I had explained that after looking in to the issue I had decided that the legal width of the footpath was greater than that provided by the current alleyway – the remainder of the width of the footpath having been built over potentially over 40 years ago. Unfortunately as the legal width of the path is not recorded in the Definitive Statement, the only evidence to support this assertion is the contemporary maps prior to the redevelopment of the garage.



*of Footpath No. 5*

*Photo of garage showing approx. legal width*

The Council has three options in my view:

1. Do nothing – which leaves the garage owner with potentially an unmortgagable property and which disregards the Council's legal duty to assert and protect public

highways; especially now we think that there is an issue in that the footpath is unlawfully obstructed (I will do more research to confirm this).

2. Extinguish the obstructed section of the footpath – which would not negatively affect the public's use of the path any more than the current situation provides and which would benefit the garage business. I realise that the current alleyway is somewhat narrow and less than what we would consider an ideal width. Without demolishing something the path cannot be made wider.
3. Take enforcement action through the Courts to remove the obstruction – which would require the demolition of the 40+ year old two-story extension to Arlesey Garage. This would have a severe negative impact on the viability of the garage business and would cost the Council and garage owner a significant amount of money in legal fees without (at the moment) a concrete chance of a successful prosecution.

Whilst I recognise Arlesey Town Council's wish to try and retain the full path width, I think that the extinguishment option is the most appropriate in this case. This is in line with the Council's Rights of Way Enforcement Policy; as extracted below:

2.2. Where paths are obstructed by permanent and/or long-lived features<sup>9</sup> and consequently the obstruction could not be reasonably or practicably removed by means of enforcement action, the Council will consider either making a Council-generated Public Path Diversion Order or a Public Path Extinguishment Order to resolve the issue. The Council will take into consideration any Court Order<sup>10</sup> requiring the removal of the obstruction when deciding whether an order should be made.

1.6. For the purposes of this document the term "*permanent features*" include (but are not limited to) the following:

- Inhabited domestic residences
- Operational commercial and agricultural buildings
- Any water feature, the removal of which would require consent under Section 23 of the Land Drainage Act 1991
- Any significant<sup>6</sup> structure constructed by a statutory undertaker for the purposes of its undertaking

1.7. For the purposes of this document a "*long-lived feature*" is something that was constructed or came into being before 1<sup>st</sup> March 1964 – the date of the first Definitive Map and Statement.

Please note the above policy says *will consider* making an order rather than *will make* an order and so our discretion to take enforcement action is unfettered – but normally used as a last resort in such cases.

I have proposed that the adjoining section of footpath to the rear of the garage which is encroached upon by the neighbouring property as shown in the photos below should also be extinguished so not to impact one land owner differently to their neighbour.



*Encroaching*

*garden fencing over legal width of Footpath No. 5*

However, if the Town Council is keen to see the legal width of the footpath being retained, enforcement action taken to open up this section of the footpath through the garden to its historic width whilst permitting the extinguishment of only the section through the garage (whether with or without the forecourt section of the footpath). This is something that we can discuss further – potentially at or after a site visit.

With regard to your Town Council's wish to see the legal width reinstated after a future development, there are a number of potential scenarios:

1. If the current legal width is retained then upon redevelopment the developers could incorporate the full legal width into the development.
2. If the current legal width is retained then upon redevelopment the developers could apply for some of the width to be stopped up to narrow the path if this was needed for the development to take place. I feel that such an application would be unlikely to be refused given the existing used width of the path.
3. If the width of the footpath was reduced as proposed in my consultation, then any future redevelopment of the garage site could incorporate a wider width under some sort of a Planning or S.106 Condition to re-create the extinguished width of the path.

I have no idea when the site will be redeveloped to the extent that the existing buildings would be demolished to allow the full historic width of the footpath to be made available for public use. With respect to these three options, doing nothing leads to legal and financial uncertainty for the owners. The Council cannot give a guarantee that legal action won't be taken against them as this is contrary to its legal duty. Moreover, anybody could apply to the Magistrates' Court to compel the Council to take action to remove the obstruction.

I feel that I may need to meet with some of your councillors and my ward members to thrash out an appropriate solution. I look forward to hearing your views on this.

Regards. Adam.

**Adam Maciejewski**

Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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Information security classification\* of this email: **Not protected**

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**From:** Susan Foulkes - Arlesey Town Council [mailto:townclerk@arleseytc.co.uk]  
**Sent:** Wednesday, December 21, 2016 4:54 PM  
**To:** Adam Maciejewski  
**Cc:** Jon Want; Cllr Richard Wenham  
**Subject:** RE: Proposed reduction of Arlesey Footpath No. 5

Dear Adam

The Town Council considered the proposed reduction of Arlesey Footpath No. 5 at its meeting held 20<sup>th</sup> December 2016, and resolved to **OBJECT** on the basis that any future redevelopment of Arlesey Garage would enable the path to be reinstated to its original width.

**The Town Council is aware that users of the path in its current state complain of its width being far too narrow.** Whilst the Town Council is not suggesting that the Garage be demolished, it is mindful that at some point in the future the Garage and site may be redeveloped. In this event, the Town Council would wish to see a planning condition applied to ensure that the footpath is widened in order to re-establish, as closely as possible, the defined legal width.

Thank you for your consideration of the Town Council's views.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [mailto:Adam.Maciejewski@centralbedfordshire.gov.uk]  
**Sent:** 08 December 2016 14:37  
**To:** Susan Foulkes - Arlesey Town Council <townclerk@arleseytc.co.uk>  
**Subject:** RE: Proposed reduction of Arlesey Footpath No. 5

Dear Susan

Thank you for your e-mail. Yes of course you can have an extension until 22<sup>nd</sup> December. Sorry I should have checked your calendar (if published) beforehand.

I'll look forward to hearing your Council's views on the proposal or any alternative suggestions they may have.

Regards. Adam.

**Adam Maciejewski**

Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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Information security classification\* of this email: **Not protected**

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**From:** Susan Foulkes - Arlesey Town Council [<mailto:townclerk@arleseytc.co.uk>]

**Sent:** Thursday, December 08, 2016 1:07 PM

**To:** Adam Maciejewski

**Subject:** Proposed reduction of Arlesey Footpath No. 5

Dear Adam

Thank you for informing the Town Council of the application to reduce Footpath No. 5 at House Lane, Arlesey.

Your letter requests feedback by Friday 16<sup>th</sup> December, however our next meeting is not scheduled until the evening of Tuesday 20<sup>th</sup> December.

I would be grateful if you would kindly grant an extension to allow the Town Council to consider the proposal at its meeting – I would strive to get a response to you no later than **22<sup>nd</sup> December** if you are in agreement?

I look forward to hearing from you.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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## Adam Maciejewski

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**From:** Susan Foulkes - Arlesey Town Council <townclerk@arleseytc.co.uk>  
**Sent:** 18 January 2018 13:09  
**To:** Adam Maciejewski; Sarah Smalley  
**Cc:** Chris Gravett; Cllr Richard Wenham  
**Subject:** RE: Footpath No. 5 - Part of Extinguishment Order

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Adam and Sarah

Further to our previous correspondence and the Town Council meeting held on Tuesday 16<sup>th</sup> January, **I can now confirm that the Town Council has resolved to withdraw its objection to the Part Extinguishment Order in relation to Footpath No. 5.**

It appears that a misinterpretation had occurred when our members considered the Order last month, however I am pleased to say this is no longer the case.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [mailto:Adam.Maciejewski@centralbedfordshire.gov.uk]  
**Sent:** 04 January 2018 14:49  
**To:** Susan Foulkes - Arlesey Town Council <townclerk@arleseytc.co.uk>  
**Cc:** Chris Gravett <chrisgravettatc@gmail.com>; Cllr Richard Wenham <Richard.Wenham@centralbedfordshire.gov.uk>; Sarah Smalley <Sarah.Smalley@centralbedfordshire.gov.uk>  
**Subject:** RE: Footpath No. 5 - Part of Extinguishment Order

Dear Susan

**Highways Act 1980 – S.118 - Central Bedfordshire Council (Arlesey: Part of Footpath No 5) Public Path Extinguishment Order 2017**

Thank you for your recent e-mails to Sarah Smalley concerning the above order.

Unfortunately you have misquoted and misinterpreted me. In my e-mail to you (dated 8/6/2017) which you quote, I wrote "...the Committee resolved that the original application [to narrow the right of way to the width of the narrow alleyway] should not be approved: instead a public path extinguishment order should be made which retained **a wider 2 metre width** for this footpath ..." (my emphasis and comment). In both of your earlier e-mails (see attached) you have represented the views of Arlesey Town Council: stating on 9/3/17 "...The Town Council would be agreeable to the reduction in width of the highway and increase of the footpath by 2 meters, providing that a 2m meter widening of the usable width of the footpath to the front and rear of the current building is achieved at the garage owner's own cost including the removal of trees, repositioning of fence of 72 Stotfold Road and attaining the appropriate ground levels..." and on 25.4.17 "...the Town Council reviewed its position and resolved that it would not seek the enforcement of short term action as previously requested, but in the event of any future re- development of the Garage site or 72 Stotfold Road a reinstatement of the 2 meter width would be required...". Consequently the 2017 public path extinguishment order which retains a width of 2 metres for Footpath No. 5 is completely in accordance with the previously stated views of your council. I attach the published minutes of CBC's Development Management Committee (as referred to in my 8/6/17 e-mail) which details the Committee's decision.

Of course, the previous comments of you and your councillors are not legally binding, your council can still resolve to formally object to the 2017 order should it wish to do so.

I would be grateful if you could now confirm your council's position as to whether it intends to object or not. If you can do this by 19<sup>th</sup> January I would be most grateful.

Yours sincerely. Adam

**Adam Maciejewski**  
Senior Definitive Map Officer  
Highway Assets Team

**Central Bedfordshire Council**, Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 |  
Email: [adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | [DX153440 SHEFFORD](https://www.centralbedfordshire.gov.uk)

*Please note that I normally work from home on Mondays, Wednesdays and Thursdays.*

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**From:** Sarah Smalley  
**Sent:** Thursday, December 21, 2017 11:34 AM  
**To:** Clerk to Arlesey Town Council; Adam Maciejewski  
**Cc:** Chris Gravett; Cllr Richard Wenham  
**Subject:** RE: Footpath No. 5 - Part of Extinguishment Order

Hi Adam

Please could you respond to Susan's query below.

Many thanks  
Sarah

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**From:** Susan Foulkes - Arlesey Town Council [<mailto:townclerk@arleseytc.co.uk>]  
**Sent:** 20 December 2017 17:21  
**To:** Sarah Smalley  
**Cc:** Chris Gravett; Cllr Richard Wenham  
**Subject:** Footpath No. 5 - Part of Extinguishment Order

Dear Sarah

We are in receipt of your notice regarding an Order in respect of part of Footpath No. 5 (as per pdf attached).

The latest information provided to ATC by Adam Maciejewski on this subject (see email below), led us to believe that the footpath would be retained at "**a wider than 2 metre width**".

The Order now received appears to be contrary to the information provided? If this is the case the Town Council would wish to register its OBJECTION to the Order in its current form, **and refer you our previous correspondence on this matter** (as contained in the attached email).

I would appreciate your urgent clarification of the situation please.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [<mailto:Adam.Maciejewski@centralbedfordshire.gov.uk>]

**Sent:** 08 June 2017 20:26

**To:** Susan Foulkes - Arlesey Town Council <[townclerk@arleseytc.co.uk](mailto:townclerk@arleseytc.co.uk)>

**Subject:** FW: Published Minutes of Development Management Committee

Dear Susan

## **Highways Act 1980 – Section 118 - Arlesey Footpath No. 5**

Please find attached an extract from the published Minutes of Central Bedfordshire Council's Development Management Committee. The Committee discussed at great length the proposed extinguishment of part of the width of Arlesey Footpath No. 5 on the 24<sup>th</sup> May. Ultimately the Committee resolved that the original application should **not** be approved: instead a public path extinguishment order should be made which retained **a wider 2 metre width** for this footpath.

There would be a number of structures situated within the legal 2 metre width if the proposed public path extinguishment order was confirmed. The Committee did not formally seek the immediate removal of any structures within the 2 metre width to be retained. To some extent this is no different from the current legal position as all these structures (walls, buildings, trees and fences) are situated within the wider (4-4.5 metres) footpath: these currently constitute unlawful obstructions. The Council, as the Highway Authority cannot give

any guarantee that it will not seek the removal of any unlawful obstruction in the future, but the steer from the Committee's discussions was that the Council would wait for future development opportunities to make the extra width available. However, if the Council is asked to open up the extra width I feel it would have difficulty in not complying with such a request – especially if this was as a result of a Court order.

In my view this is an unsatisfactory position from the perspective of the adjoining landowners, leaving them with an uncertain future. However, they will have the opportunity to object to the order when it is made in a couple of month's time: they could argue for a narrower width at this time.

You will be served with a copy of the order when it is made. Should you have any queries in the meantime please contact me.

Yours sincerely. Adam.

**Adam Maciejewski**

Senior Definitive Map Officer  
Highways Assets Team

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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## Adam Maciejewski

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**From:** Susan Foulkes - Arlesey Town Council <townclerk@arleseytc.co.uk>  
**Sent:** 26 April 2017 08:44  
**To:** Adam Maciejewski  
**Subject:** RE: Footpath No 5 House Lane Arlesey

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Adam

Yes, your understanding is correct – the Council's position on the proposed width reduction in unchanged.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [mailto:Adam.Maciejewski@centralbedfordshire.gov.uk]  
**Sent:** 25 April 2017 17:22  
**To:** Susan Foulkes - Arlesey Town Council <townclerk@arleseytc.co.uk>  
**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Susan

Thank you for your e-mail in which you state that your Council's position has changed to the effect that it would no longer seek the imminent enforcement of a 2 metre width to the front and rear of the Garage. As you mention a 2 metre width, do I understand that your Council still requires that any narrowing of the footpath be only to achieve a width of 2 metres – and that the proposed width reduction to that of the current alleyway would still see your Council objecting to such an order?

If you can clarify this for me I will inform Mr. Chalkley and the owners of No. 72 of the change in position – which I am sure they will be very pleased to hear.

Kind regards. Adam.

**Adam Maciejewski**

Senior Definitive Map Officer  
Highways Assets Team

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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\*Information security definitions:

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**From:** Susan Foulkes - Arlesey Town Council [<mailto:townclerk@arleseytc.co.uk>]

**Sent:** Tuesday, April 25, 2017 4:15 PM

**To:** Adam Maciejewski

**Cc:** [asg.arlesey@gmail.com](mailto:asg.arlesey@gmail.com); Chris Gravett; Chairman of Arlesey Town Council

**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Adam

Further to correspondence received from Mr S. Chalkley of 40 Stotfold Road, the Town Council reviewed its previous resolution on Footpath No 5 at a meeting held last Tuesday, 18<sup>th</sup> April 2017.

The Town Council was informed that 72 Stotfold Road is held under a separate freehold to the Garage site, and given that 72 is not due to change ownership in the near future, coupled with the fact that 72 may have already established boundary rights at Land Registry (as we are locally informed), the Town Council's previous position that the path be made wider to the front and rear of the garage is obviously unachievable. Taking this into account, and also the effect that moving the wall to the front of the garage would have on access to the garage, the Town Council reviewed its position and resolved that it would not seek the enforcement of short term action as previously requested, but in the event of any future re- development of the Garage site or 72 Stotfold Road a reinstatement of the 2 meter width would be required.

I trust the details herein are sufficient for your purposes but please do not hesitate to contact me should the need arise.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [<mailto:Adam.Maciejewski@centralbedfordshire.gov.uk>]  
**Sent:** 09 March 2017 10:32  
**To:** Susan Foulkes - Arlesey Town Council <[townclerk@arleseytc.co.uk](mailto:townclerk@arleseytc.co.uk)>  
**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Susan

Thank you for clarifying that particular point.

Kind regards. Adam.

**Adam Maciejewski**  
Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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**From:** Susan Foulkes - Arlesey Town Council [<mailto:townclerk@arleseytc.co.uk>]  
**Sent:** Thursday, March 09, 2017 10:15 AM  
**To:** Adam Maciejewski  
**Cc:** David Leverington; Andrew Gwillam; Chairman of Arlesey Town Council; Chris Gravett  
**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Adam

Thank you for your acknowledgement of ATC's formal view on the proposed narrowing of Footpath No 5.

You are correct in your assumption that ATC would indeed object to an order to narrow the footpath to the current width of the alleyway.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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**From:** Adam Maciejewski [<mailto:Adam.Maciejewski@centralbedfordshire.gov.uk>]  
**Sent:** 09 March 2017 10:08  
**To:** Susan Foulkes - Arlesey Town Council <[townclerk@arleseytc.co.uk](mailto:townclerk@arleseytc.co.uk)>  
**Cc:** David Leverington <[David.Leverington@centralbedfordshire.gov.uk](mailto:David.Leverington@centralbedfordshire.gov.uk)>; Andrew Gwillam <[Andrew.Gwillam@centralbedfordshire.gov.uk](mailto:Andrew.Gwillam@centralbedfordshire.gov.uk)>  
**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Susan

### **Highways Act 1980 – S.118 – proposed narrowing of the obstructed section of Arlesey Footpath No. 5**

Thank you for your e-mail conveying Arlesey Town Council's views on what should be done about the obstructed section of Footpath No. 5. As I said to the councillors at the site meeting, this would still leave a partly obstructed footpath and cause a lot of legal issues – potentially ending up in the courts as part of any attempt by CBC to enforce the 2 metre wide route across garden of No.72 and the garage forecourt. I would still recommend a narrowing to just the width of the alleyway: however, I will include the ATC's formal view on the matter in my report and I will let the members of the Council's Development Management Committee determine what action to ultimately take in this tricky matter.

Given the ATC's views on the matter, I am presuming that if an order were made to narrow the footpath to just the current width of the alleyway, this would be objected to by the ATC?

Kind regards. Adam.

**Adam Maciejewski**  
Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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Information security classification\* of this email: **Not protected**

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**From:** Susan Foulkes - Arlesey Town Council [<mailto:townclerk@arleseytc.co.uk>]  
**Sent:** Thursday, March 09, 2017 9:37 AM  
**To:** Adam Maciejewski  
**Subject:** Footpath No 5 House Lane Arlesey

Dear Adam

Further to the site meeting and subsequent emails, the Town Council has now considered its position in terms of how it believes CBC should manage the Garage's encroachment on Footpath 5.

The Town Council would be agreeable to the reduction in width of the highway and increase of the footpath by 2 meters, providing that a 2m meter widening of the usable width of the footpath to the front and rear of the current building is achieved at the garage owner's own cost including the removal of trees, repositioning of fence of 72 Stotfold Road and attaining the appropriate ground levels . The deeds of the property should record the existence of a 2 meter footpath in its entirety, so as to preserve and protect the reinstatement of the full 2 meter width at the point of any future redevelopment.

I trust the above is sufficient for you to take this matter forward.

Kind regards

**Susan Foulkes**  
**Town Clerk**

**(01462) 733722**



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Stewart Chalkley Director  
ASG (Biggleswade) Ltd  
7 Pegasus Mews  
Stratton Business Park  
Biggleswade  
SG18 8QA

Adam Maciejewski  
Central Bedfordshire Council  
Priory House  
Monks Walk  
Chicksands, Shefford  
Beds  
SG17 5TQ

03 May 2017

Dear Mr Maciejewski,

**Re: Footpath number 5 House Lane, Arlesey**

You have asked me to give my reasons why I appose the application to widen the footpath to two metres in front and behind the garage.

1. The doors into the building will be obstructed.
2. Removal of fence and trees in garden of 72 Stotfold Road will compromise the structure of the building.
3. The stopcock serving water main to properties in House Lane is located in proposed footpath and would require removal.
4. Arlesey Town Council are agreed to leave footpath as it is.

Thank you for your help in this matter and look forward to a swift resolution.

Yours truly

Stewart Chalkley

## Adam Maciejewski

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**From:** Adam Maciejewski  
**Sent:** 06 February 2017 16:04  
**To:** 'Chris Gravett'  
**Cc:** Clerk to Arlesey Town Council; Chairman of Arlesey Town Council; Cllr Richard Wenham; James Coggins; David Leverington  
**Subject:** RE: Footpath No 5 House Lane Arlesey

Dear Chris

Thank you for your e-mail and for attending the site meeting with myself and Cllr. Wenham.

I would like to comment on the points you make as below:

1. The original 'highway' and where it has been 'built over' are clear by the remaining full width highway to the rear of the garage western boundary and the presence of No 65 House Lane's water meter situated in the garage yard.
  - I agree. I believe that the full width of the historic agricultural access track was utilised as a public right of way. Unfortunately no width was recorded in the Definitive Statement for the path so we only have mapping evidence and presumed dedication of the full width beyond any extent of a worn path to support this interpretation. I will look at the post-1945 aerial photography to see what this shows. We will have to take a view on whether the evidence gleaned is sufficient to safely support any potential court action.
2. The existing narrow path is of insufficient width for two people to pass, for mobility scooter access and very tight even for a pram or pushchair. It falls short of the required minimum 2 meter width.
  - I agree that the width is too narrow for some two-way traffic. There is no "required minimum width" for old paths. However, we do specify a minimum of 2 metres for new routes and, where physically possible, we do like to make older paths this wide too. Unfortunately there are places around the authority where this just isn't possible.
3. Mrs Gill Taylor the property owner of no 65 has been insulted by the communications she has received asking her to sacrifice her own land in order to widen the path and is obviously not willing to do so. Mrs Taylor has issues with trees from the garage property hanging over her own land (she has funded the pruning of them). Mr Simon Spoor, her nephew represented her at the meeting and is aware of the compromise suggestion made at the meeting (below).
  - I have read the previous letters to and from Mrs. Taylor. There was nothing unacceptable within them: my colleague simply asked whether she would consider giving up a 1 metre strip of her garden in return for compensation. This was an appropriate investigation of the options at that time. The trees are not rooted in the available highway – but could be rooted in the wider built over highway. If so, then Central Bedfordshire Council would be liable for their maintenance: but only if they posed a hazard rather than just because they blocked light or dropped leaves.
4. It would seem of no benefit to the community to force the new garage owner to reinstate the full width of the highway as there is no requirement of or purpose for vehicle access. However it would be equally unacceptable for the official width of the

footpath to be reduced to its current width or for the path to be closed. (It is a heavily used walkway and public footpath).

- I would argue that it is of no benefit to reduce the width to 2 metres if this is still permanently obstructed by a brick building. There is merit in having a 2 metre width where this can be practicably made open and available for public use: i.e. the forecourt if the low brick wall is removed, and the rear of No. 72's garden if the fencing and trees are removed. This would reduce the length of the pinch-point to a more acceptable length.

5. On behalf of ATC we proposed that the new owner be advised that there could be a compromise to authorise the reduction in width of the highway and increase in width of current footpath to a two meter footpath. With immediate effect the path would be extended to two meters, at the garage owners cost, to the east and west of the building that currently is in situ. The landowner would also be advised that the building encroaches over the path and that when and if the site is developed the two meter footpath would be fully reinstated.

- I don't think a reduced width of 2 metres will be seen as a compromise from the Garage owner's perspective. This width would still leave his property theoretically under threat of demolition (and thus unmortgageable) – this is something we, as the Highway Authority, cannot guarantee would not happen. The usable width of the path could be widened to the front and rear of the garage building – although this may require enforcement action via a court order subject to higher appeal.
- As I have said previously, I do not see why any redevelopment could not be subject to the imposition of a wider footpath at that time rather than have an obstructed footpath for possibly the next 10-15 years.

6. ATC will discuss and hopefully approve this compromise offer at our February meeting.

- As I said at the site meeting, I am happy to put your suggestion to the Council's Development Management Committee for consideration with the caveats I've mentioned above. In the meantime I will contact the applicant and Garage owner and the owners of No.72 Stotfold Road to let them know what is proposed to allow them the opportunity to comment.

Regards. Adam.

**Adam Maciejewski**

Senior Definitive Map Officer  
Rights of Way Team, Highways Service

**Central Bedfordshire Council** Priory House, Monks Walk, Chicksands, SHEFFORD, SG17 5TQ  
Direct Dial: 0300 300 6530 | Internal: 76530 | Mob: 07391 412 525 | Email:  
[adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk) | DX153440 SHEFFORD

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Information security classification\* of this email: **Not protected**

**From:** Chris Gravett [mailto:chrisgravettatc@gmail.com]

**Sent:** Monday, February 06, 2017 1:02 PM

**To:** Adam Maciejewski

**Cc:** Clerk to Arlesey Town Council; Chairman of Arlesey Town Council; Cllr Richard Wenham

**Subject:** Footpath No 5 House Lane Arlesey

Dear Adam,

Thank you for your time on Friday, I found the on site meeting most informative and productive. Below are the key points from our meeting:

1. The original 'highway' and where it has been 'built over' are clear by the remaining full width highway to the rear of the garage western boundary and the presence of No 65 House Lane's water meter situated in the garage yard.
2. The existing narrow path is of insufficient width for two people to pass, for mobility scooter access and very tight even for a pram or pushchair. It falls short of the required minimum 2 meter width.
3. Mrs Gill Taylor the property owner of no 65 has been insulted by the communications she has received asking her to sacrifice her own land in order to widen the path and is obviously not willing to do so. Mrs Taylor has issues with trees from the garage property hanging over her own land (she has funded the pruning of them). Mr Simon Spoor, her nephew represented her at the meeting and is aware of the compromise suggestion made at the meeting (below).
4. It would seem of no benefit to the community to force the new garage owner to reinstate the full width of the highway as there is no requirement of or purpose for vehicle access. However it would be equally unacceptable for the official width of the footpath to be reduced to its current width or for the path to be closed. (It is a heavily used walkway and public footpath).
5. **On behalf of ATC we proposed that the new owner be advised that there could be a compromise to authorise the reduction in width of the highway and increase in width of current footpath to a two meter footpath. With immediate effect the path would be extended to two meters, at the garage owners cost, to the east and west of the building that currently is in situ. The landowner would also be advised that the building encroaches over the path and that when and if the site is developed the two meter footpath would be fully reinstated.**
6. ATC will discuss and hopefully approve this compromise offer at our February meeting.

regards

Cllr. Chris Gravett

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Re: 72 Stotfold Road  
Arlesey Footpath No.5  
05/04/2017

Please see below, an account of what I believe to be the facts regarding our property.  
Mr Gates purchased the land in 1920, and built the garage and house in 1927.  
In 1948 Mr Pyman purchased the Garage and house.  
When the new development (Chase Close and The Poplars) was built, Mr Pyman built a low wall, his family recall that he said "he had to leave a three-foot width for the footpath" which he did. (This wall still forms the boundary of our property)  
During this period of ownership, Mr. Pyman extended the garage, his family said he had building regulations for this.

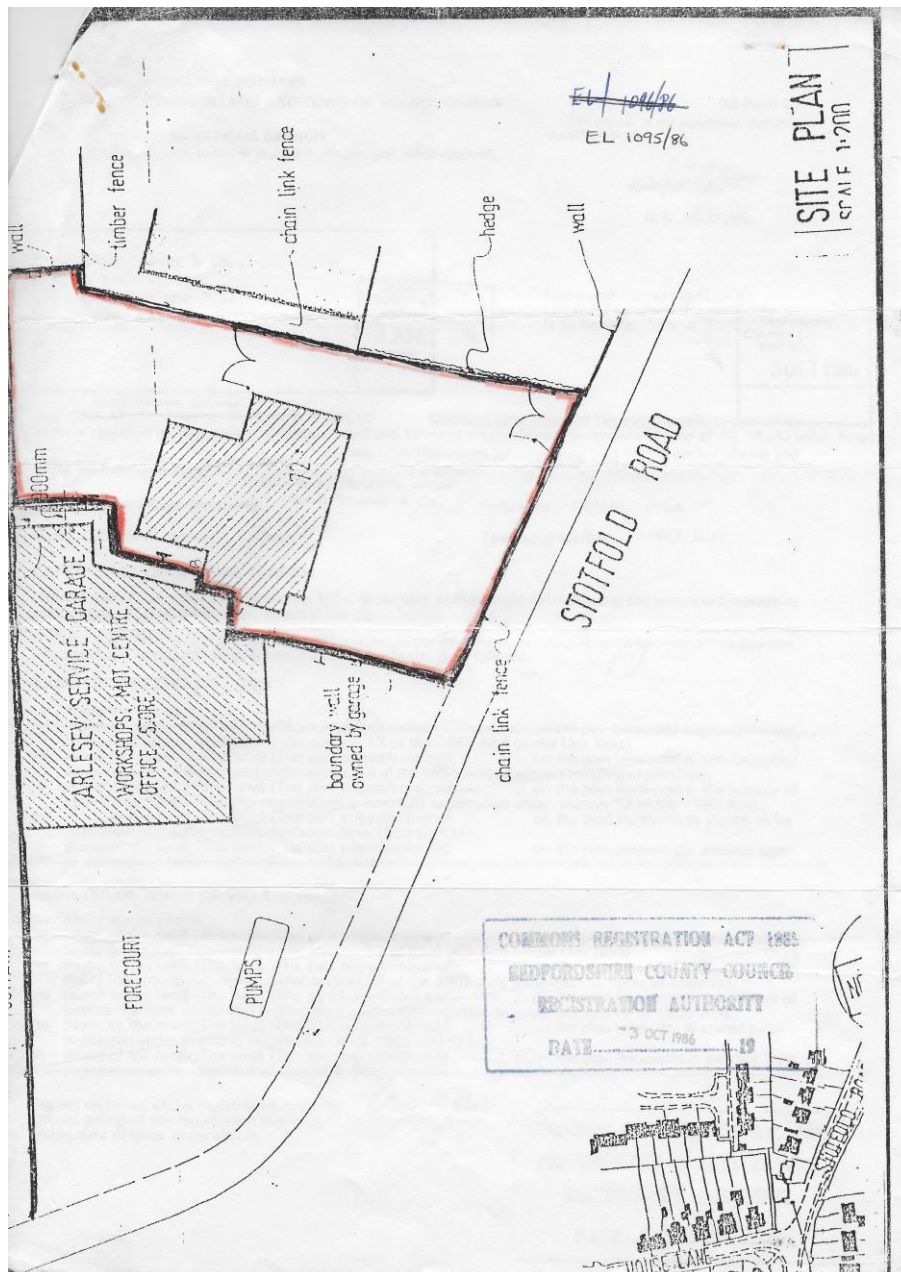
In January 1985 the garage and house were sold to Mr. Gunn, who divided the two buildings. He sold the house to Homelife Properties Ltd. in January 1986 and it remained empty until my husband and I purchased the house in December 1986.  
We registered the land at the time of purchase, we were aware of the footpath running behind our property and there was no condition in our purchase agreement regarding any right of way over our land.

The fact that Mr Pyman and Mr Gunn had been allowed to extend the garage, forming a narrower footpath, plus, the fact that our garden boundary is also in line with the garage wall, leads me to believe that the three-foot rule was adhered to and that the land gained was legally belonging to the property.  
Furthermore, the permission for the building work lies with the County Council, who would have also agreed to the width of the footpath.

The OS map of 1976 shows this change (see below)







Land Registration doc. 1986

I would like to say that I cannot see what positive outcome would be achieved in the local authorities requesting this piece of land for a wider footpath, especially because the footfall on the existing one is low.

We have lived in this property for over thirty years, the existing boundary wall has been in place for at least fifty years.

I would suggest this section of land in dispute, is classed as Excepted Land. It has two three mature trees, a patio and a workshop on it, plus nesting Wrens, Blackbirds, Wood Pigeons and Bumblebees.

I feel the Councils pursuit to claim this section of land is a waste of time and public money, not to mention the distress caused to our family

Wendy Kirwan

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**TAB O**

**O. Landowner consent forms**  
(to follow)

To be returned to:

Adam Maciejewski, Senior Definitive Map Officer, Highway Assets Team, Central Bedfordshire Council, Thorn Turn Highways Depot, Thorn Road, Houghton Regis, DUNSTABLE, LU5 6GJ

Or scanned and e-mailed to: [adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk)

## PERMISSION TO ENTER LAND

I (print name) STEWART CHALKLEY

of

(print address) 74 STOTOLD ROAD,  
ARLESEY  
BEDS SG15 6XT

hereby give permission for the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs, and accompanying parties, to access the right of way and the land around it as appropriate for the purposes of determining the: **Central Bedfordshire Council (Arlesey: Part of Footpath No 5) Public Path Extinguishment Order 2017**

You will be contacted nearer to the date of any Inspector's site visit to be informed of the date and time of the visit.

Please state whether there are any dogs or other animals/livestock or other dangers or hazards on site which the Inspector needs to be made aware of for the site visit

Signed

Dated

30/08/2018

To be returned to:

Adam Maciejewski, Senior Definitive Map Officer, Highway Assets Team, Central Bedfordshire Council, Thorn Turn Highways Depot, Thorn Road, Houghton Regis, DUNSTABLE, LU5 6GJ

Or scanned and e-mailed to: [adam.maciejewski@centralbedfordshire.gov.uk](mailto:adam.maciejewski@centralbedfordshire.gov.uk)

## PERMISSION TO ENTER LAND

I (print name) WENDY KIRWAN (MRS.)

of

(print address) 72 STOTFOLD RD

ARLESEY

BEDS - SG15 6XT

hereby give permission for the Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs, and accompanying parties, to access the right of way and the land around it as appropriate for the purposes of determining the: **Central Bedfordshire Council (Arlesey: Part of Footpath No 5) Public Path Extinguishment Order 2017**

You will be contacted nearer to the date of any Inspector's site visit to be informed of the date and time of the visit.

Please state whether there are any dogs or other animals/livestock or other dangers or hazards on site which the Inspector needs to be made aware of for the site visit

WE HAVE A DOG BUT WILL ENSURE SHE IS KEPT IN DOORS.

Signed



Dated

17.09.2018