

## Central Bedfordshire Council

Decision by the Head of Highways under Delegated Powers 14/10/2015

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### **An application to divert parts of Henlow Footpaths Nos. 7 and 8 at The Lodge, Arlesey Road (A507)**

Report of David Leverington - Rights of Way Team Leader

Advising Officers: Paul Cook - Assistant Director for Highways and Transport and Adam Maciejewski – Senior Definitive Map Officer (author)

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

1. **To determine whether a public path diversion order should be made for parts of Henlow Footpaths Nos. 7 and 8 to move the footpaths further from The Lodge to reduce the effect of alleged anti-social behaviour and attempted break-ins on the occupants and applicant.**

#### **RECOMMENDATIONS**

The Head of Highways is asked to:

1. **Approve** the making of a public path diversion order under Section 119 of the Highways Act 1980 to stop up the section of Henlow Footpath No. 8 between points A-B on the plan at Appendix 2 and to create a new section of Footpath No. 8 between points A-H.
2. **Refuse** to make a public path diversion order under Section 119 of the Highways Act 1980 to stop up the section of Henlow Footpath No. 7 between points C-B-D on the plan at Appendix 1 and to create a new section of footpath between points A-F-H-G<sup>1</sup>/G<sup>2</sup> because it is neither in the interest of the owner/occupier nor of the public.

#### **Introduction**

2. Mr. Steve Tribble applied in February 2010 to divert parts of Henlow Footpaths Nos. 7 and 8 to try to reduce the amount of anti-social behaviour and attempted break-ins that he alleges he was experiencing. The anti-social behaviour and attempted break-ins have continued to-date and Mr. Tribble has stated that his health has suffered to some degree because of this.
3. Bedfordshire Police's Local Policing Team for Shefford, Stotfold and Arlesey have confirmed that there has been some minor crime at

Mr. Tribble's property, The Lodge on Arlesey Road, in 2011 but generally the level of incidents is considered to be low.

4. Appendix 1 shows the proposal plan agreed with both Mr. Tribble, the applicant, and Mr. Curson, the principal landowner affected by the application.
5. Henlow Footpath No. 7 is the preferred route of any northwards continuation of the Sustrans National Cycle Route 12 (Great North Way) from Arlesey and would connect to the recently created bridleway running past Poppy Hill Lakes to Langford. Whilst Mr. Tribble's application relates solely to footpaths, it is envisaged that the applied for diversion route G-F-H-D at Appendix 1 would be suitable to accommodate any future upgrade in status to allow public cycle use.

### **Land ownership considerations**

6. The applicant, Mr. Tribble, owns only a very small portion of the land over which Footpath No. 8 passes (a narrow wedge totalling approximately 14.8 m<sup>2</sup>) and none of the land over which Footpath No. 7 passes. Instead the remainder of the land crossed by these footpaths is owned by Henlow Aggregates Ltd. and Henlow Bridge Lakes and Riverside Ltd. (both owned and controlled by Mr. David Curson). Similarly, Mr. Tribble does not own any of the land proposed to accommodate the proposed diverted sections of Footpaths Nos. 7 and 8 – this is again owned by either Henlow Aggregates Ltd. or Henlow Bridge Lakes and Riverside Ltd. or by Central Bedfordshire Council (as highway waste for the Arlesey-Stotfold Bypass).
7. Mr. Curson has agreed to accommodate the proposed diversion routes on his land and, in a separate private agreement, to transfer the ownership of the woodland south of the new section of Footpath No. 8 to the applicant, Mr. Tribble.

### **Legal and policy considerations**

8. Section 119 of the Highways Act 1980 ("the 1980 Act") empowers the Council, as Highway Authority, to make and confirm an order to divert a public footpath subject to a number of legislative tests being met as below.
9. The Council can **make** a public path diversion order if it is expedient to do so in the interests of the owner or occupier of the land crossed by the footpath or the public. The Council also has to be satisfied that the termination points are substantially as convenient and connected to the same or a connected highway.
10. Mr. Tribble only owns a very small portion of the land over which Footpath No. 8 runs. This area is located to the north of his garage within Mr. Tribble's perimeter fence and is thus unavailable for public use. The usable area of the footpath is over land owned by Mr. David Curson. However, Mr. Tribble does not need to own *all* the land crossed by the footpath - his ownership of only part of the land is sufficient for a diversion order to be made in his interest.

11. Mr. Tribble considers that the moving of the footpaths further away from his property will reduce the impact of any anti-social behaviour on his property and will reduce the number of attempted break-ins that he alleges have taken place. Whether this is found to be the case is something that can only be demonstrated once the footpath is diverted. Mr. Tribble will still have a fence next to the new route of Footpath No. 8 which may be subject to vandalism and the noise from late night passers is unlikely to be substantially diminished by the slight increase in distance and the additional intervening vegetation. However, I consider that it is expedient for the Council to act to help mitigate the alleged anti-social behaviour if there is no detrimental effect on either the public purse or members of the public – be they users or adjacent landowners.
12. Mr. Tribble does not own or occupy any of the land crossed by Footpath No. 7 although his residence abuts the footpath and he uses the land parcel crossed by the footpath as the sole means of access to his property. However, whilst Mr. Tribble thus appears to have a legal interest in the land, an order cannot legally be made in his interest as he neither owns, leases nor occupies the land crossed by the footpath. There is no clear reason why the diversion of Footpath No. 7 is in the interest of the current owner, Mr. Curson; indeed when asked how the diversion would be in his interest he did not identify any interest (see Paragraph 22 below). Similarly, the diversion of this section of Footpath No. 7 is neither particularly beneficial to, nor detrimental to, the interest of the public. The proposed new route would be essentially of similar usable width but would avoid the current hand-gate and any potential vehicle movements by those staying at or visiting The Lodge. The potential for the new route to form part of the Great North Way is not sufficient reason to make the order as any future provision of cycling access would need to be by separate statutory creation - which walkers may consider to be detrimental to their interests. Consequently I do not consider that it is in the interest of any identified party to divert the proposed section of Footpath No. 7 and therefore an order cannot be made to divert this section of footpath.
13. If funding for a cycle route is found, a subsequent order to extinguish this section of footpath as part of the creation of a bridleway/cycling route to Henlow would be made under different legislation (Sections 26 and 118 of the 1980 Act) and so public access could be removed from the land directly in front of Mr. Tribble's house at that time.
14. The section of Footpath No. 8 proposed to be diverted from points A-B to A-H (see plan at Appendix 2) either utilises the same termination point or one located very close by on a connecting footpath.
15. The section of Footpath No. 7 which is the subject of the diversion application would be diverted from points C-B-D to G-F-H-D on the plan at Appendix 1 and would either utilise the same termination points or ones located very close by on a connecting highway (Arleseey Road).
16. It is therefore possible to make a diversion order for that part of Henlow Footpath No. 8 between points A-B

17. Before **confirming** a public path diversion order the Council must be satisfied that the diversion route will not be substantially less convenient to the public and it is expedient to do so having regard to the effect on the public's enjoyment of the route as a whole and the effect of the order on the lands served by the path and the diversion.
18. Footpath No. 8 would be diverted from the line A-B to A-H on the plan at Appendix 2 with a slight dog-leg at point A. The new route has a distance of approximately 68 metres – an increase of approximately 5.5 metres and would have an increased width of approximately 3 metres. The new path would be fenced with panel fencing to its southern side (as it is now) with a post and rail fence to its northern side (compared to the current hedge). Consequently the path would not be substantially less convenient and arguably would be more enjoyable. The land at either end of the path that is served by it would be unaffected by the diversion.
19. Footpath No. 7 would be diverted from the line C-B-D to the line G<sup>1</sup>/G<sup>2</sup>-F-H-D on the plan at Appendix 1. The new route has a distance of approximately 35 metres – an increase of approximately 4 metres and would have a width of approximately 3 metres – which is comparable to the width of the currently walked route. Again the land at either end of the path that is served by it would be unaffected by the diversion although the new route would cross highway waste between points between G<sup>1</sup>/G<sup>2</sup>-F where works would be required to clear scrub and level the ground.
20. The Council has a duty under Section 119(6A) of the 1980 Act to consider any material provisions contained within a Rights of Way Improvement Plan ("RoWIP") when determining whether or not to confirm a public path order. The Council's Outdoor Access Improvement Plan acts as its RoWIP. The proposal does not conflict with any of its aims.
21. Section 29 of the 1980 Act imposes a duty on the Council to have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features when determining whether to make and confirm a public path order. The recommended order would not have a detrimental effect on these considerations beyond the requirement for two or three of the younger trees not covered by the 1953 Henlow Grange Area Tree Preservation Order to be trimmed back to accommodate the width of the footpath. This work has been agreed by the Council's Trees and Landscape Officer.

## Consultations

22. Mr Tribble, the applicant, has been consulted on the recommendation in the report to divert just one of the footpaths owing to there being no qualifying interest to divert part of Footpath No. 7 and has been invited to provide further comments in support his application. Mr. Tribble is disappointed with the recommendation and considers that his application would "...benefit the owner... as it would help to build on the strong relationship we have and help to avoid any complaints about noise and disruption..." Mr. Tribble wishes his application to be determined as

quickly as possible as he is unhappy how long it has taken to process. His application is therefore being determined under delegated powers to speed up the decision-making process.

23. Mr. David Curson has attended site visits to discuss the proposed diversion routes of Footpaths Nos. 7 and 8 and has approved the application as shown in Appendix 1. In response to a query about whether the proposed diversions were in his interest he stated in an e-mail, dated 22 August 2015, "*...in answer as to why it is in our interest to move the footpaths - we cannot give you a definitive answer. Mr and Mrs Tribble have concerns with the footpaths close to their property involving users of the footpath and noise. In an effort to be good neighbours we have agreed to these proposals subject to our not being involved in any substantial costs and that our exiting rights of way are still retained to all areas and in front of No. 31 [The Lodge] for vehicles as well as foot. It is our intention in the near future to submit a planning application on the aggregates site involving upgrading other areas of the footpath network to fp8...*".
24. Henlow Parish Council was consulted and responded by e-mail on 17 August to state that it "*...has no objections to the diversion, and fully supports the proposals...*". However, following further consideration of the proposal by the Parish Council on 21 September 2015 it subsequently stated "*...Members supported the diversion of f/p 8 to be further north of The Lodge / no 31 [A-H on plan at Appendix 2], but only up to where it meets f/p 7, where the existing link to Arlesey Road [C-B-H on plan at Appendix 2] should remain as existing...*"
25. The local Ward Members: Cllrs. Dalgarno, Dixon, and Shelvey, were consulted on the proposal as shown at Appendix 1. In an e-mail dated 14 August 2015 Cllr. Dalgarno stated "*...Having consulted with my colleagues we do not support this proposal. As ward members we are not aware of anti-social behaviours or break-ins in the area and cannot see merit in such minor changes to the network...*". Cllr. Wenham was informed by the author at a meeting on 27 August that the report's recommendation was for only part of Footpath No. 8 should be diverted and that Mr. Tribble, as applicant, would be paying for the cost of the diversion. Cllr. Wenham subsequently confirmed that he and the other ward members were satisfied with the current recommendations and for the report to be determined under delegated powers.
26. Bedfordshire Police's Local Policing Team was contacted to establish the level of reported anti-social behaviour and attempted break-ins at The Lodge. The Local Policing Team responded on 8 September 2015 to confirm that "*...In terms of the Lodge itself there is a crime report from 2011 of a fence being damaged. Some [other recorded incidents] may have fallen under this area but I think most of them were further [along Arlesey Road] in which case it is safe to say the level of incidents could be considered low... There are also some offences linked to the camp site there of youths causing issues (dating back to 2013 and a lot of these ...offenders are no longer active in this area) and a burglary [on an unspecified] dwelling earlier on this year...*".

27. Mr. Steven Bown, Team Leader Highways, was consulted over the proposal as it potentially affects highway waste. In an e-mail dated 19 August 2015 Mr. Bown stated that he didn't "...*have any issues with this from a highways perspective...*".
28. The Ramblers' area footpaths officer was consulted but no response was received.
29. Mr. Martin Knight is a resident of Henlow with an interest in public rights of way. Although he was not consulted he nevertheless contacted the Council by telephone and e-mail on 23 August 2015 to raise his concerns about providing a wider route for Footpath No. 8 without any restrictions to control unauthorised cycling along the footpath. In response - the current kissing gate on Footpath No. 8 can be moved on to the new route of the footpath to deter cyclists from using the footpath.
30. The area crossed by the footpaths and proposed diversion routes lies within the Henlow Grange Tree Preservation Order area. Mr. Pat Longland, the Council's Trees and Landscape Officer, has attended a site visit and has agreed levels of tree work needs to open up the proposed alternative route of Footpath No. 8.
31. The British Telecom, Anglian Water, National Grid (gas) and UK Power Networks were consulted as statutory undertakers. National Grid and UK Power networks confirmed that they either had no objection or were not affected by the proposals. British Telecom and Anglian Water have not responded.

### **Reasons for decision**

32. The proposed diversion of that part of Henlow Footpath No. 8 between points A-B to points A-H (see Appendix 2) meets the legislative tests under Section 119 of the 1980 Act given that Mr. Tribble owns some of the land crossed by the footpath and it is in his interest for the diversion to take place to help alleviate any anti-social behaviour issues. It is also expedient that the Council makes what is a very minor diversion onto what would be a wider more enjoyable route.
33. Whilst it may be expedient for the section of Footpath No. 7 to be diverted to help alleviate any anti-social behaviour issues Mr. Tribble is experiencing, he does not own any of the land crossed by the path and so an order cannot be made in his interest. Neither is the requested diversion of this section of Footpath No. 7 in the interest of Mr. Curson who does own the land. The diversion is also not in the interest of the public. Consequently an order diverting Footpath No. 7 can neither be made nor confirmed.

### **Council Priorities**

34. The proposal will comply with the Council's priority to "*promote health and wellbeing and protecting the vulnerable*" by helping to mitigate

against the local anti-social and criminal behaviour that is affecting the well being, peace and security of the applicant, Mr. Tribble.

35. The proposal would also comply with the Council's priority to provide *"better infrastructure – improved roads, broadband reach and transport"* by providing a wider section of footpath to the north of The Lodge.

## **Corporate Implications**

### **Legal Implications**

36. Section 119 of the Highways Act 1980 empowers the Council to make and confirm a legal order to divert a public footpath if all the legislative tests are made.
37. If objections are received to the order and not withdrawn the order cannot be confirmed but can be forwarded to the Planning Inspectorate to be considered by an independent Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs. The Inspector will inquire as to whether the order is in the interest of the person named in the order. If they are not satisfied that it is they will not confirm the order.
38. The power to divert a public footpath is a discretionary function. Consequently Mr. Tribble has no statutory right of appeal against a refusal of his application beyond applying to the High Court for the delegated decision to be Judicially Reviewed.

### **Financial Implications**

39. By submitting his application Mr. Tribble has agreed to defray the Council's administrative costs in the making of a public path order along with the costs of advertising that order and of any associated works to bring the new routes up to a suitable standard for public use. However, if the Head of Highways determines that no order should be made then the current cost of Council administration, approximately £1200 up to the point of determination, could not be charged to Mr. Tribble and instead would need to be borne by the Rights of Way Team's existing revenue budget.
40. If the Head of Highways approves the making of the recommended order diverting part of Footpath No. 8, the likely cost of Council administration and advertising of the making and confirmation of the order is estimated to be approximately £2560 – all of which would be paid by Mr. Tribble.
41. Mr. Tribble, as applicant, would also be liable for the cost of any works to bring the diverted route of Footpath No. 8 up to a suitable standard. This is envisaged to cost between £1500 and £2,100 for an aggregate surface if a Council contractor carries out the work. However Mr. Tribble and Mr. Curson both have access to the necessary equipment and may choose to do the work directly which would be acceptable providing it is carried out to a standard approved by the Council's Rights of Way Team. Additionally, any vegetation clearance and tree-work would also need to be carried out

to the satisfaction of the Council's Trees and Landscape Officers and would need to be paid for by Mr. Tribble.

42. Should the Head of Highways consider that Footpath No. 7 should also be diverted, this would marginally increase the cost to Mr. Tribble of drafting and advertising the orders. However, the main increase in cost, however, would be the cost of work to set out the new route of Footpath No. 7. This is envisaged to cost approximately £2750. As the specification of the surfacing potentially would be to a higher standard than required for a footpath to enable the later conversion to a cycle route, the Council would share the cost of this work with the applicant. Approximately £1400 would therefore be borne by an existing capital allocation to the Rights of Way Team for this work.
43. Mr. Tribble has agreed to defray any compensation costs arising from the coming into operation of the diversion order. The affected landowner, Mr. Curson, has not indicated that he intends to claim compensation.

### **Equalities Implications**

44. The proposal would provide a route of greater width to the current route and with a similar low level of camber, gradient and length. The surfacing would be to a similar or higher standard than the existing route. Consequently the proposal would not detrimentally affect any particular segment of society.

### **Community Safety**

45. 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 reported anti-social behaviour, attempted break-ins and the Police crime report favour the Council taking action, in this case using the Highways Act 1980 to divert the footpaths, if it is appropriate and possible to do so.
46. The proposal would move a short, approximately 60 metres long, section of Footpath No. 8 approximately 7 metres northwards away from the current property boundary of The Lodge. The applicant considers that this diversion would satisfactorily reduce the level of anti-social behaviour and attempted break-ins. However, whether there actually is any reduction could only be determined over the months and years following a successful diversion.
47. Whilst the new section would be wider with a more open aspect to the north, the diversion would introduce a dog-leg into the footpath at point A. This would have the effect of reducing sight lines and visibility along the length of the path within a wooded area. This may deter some users from walking the route. There is, however, a parallel cycle track alongside the A507 Arlesey Road approximately 22 metres to the south which walkers could use as an alternative.



## **Conclusions**

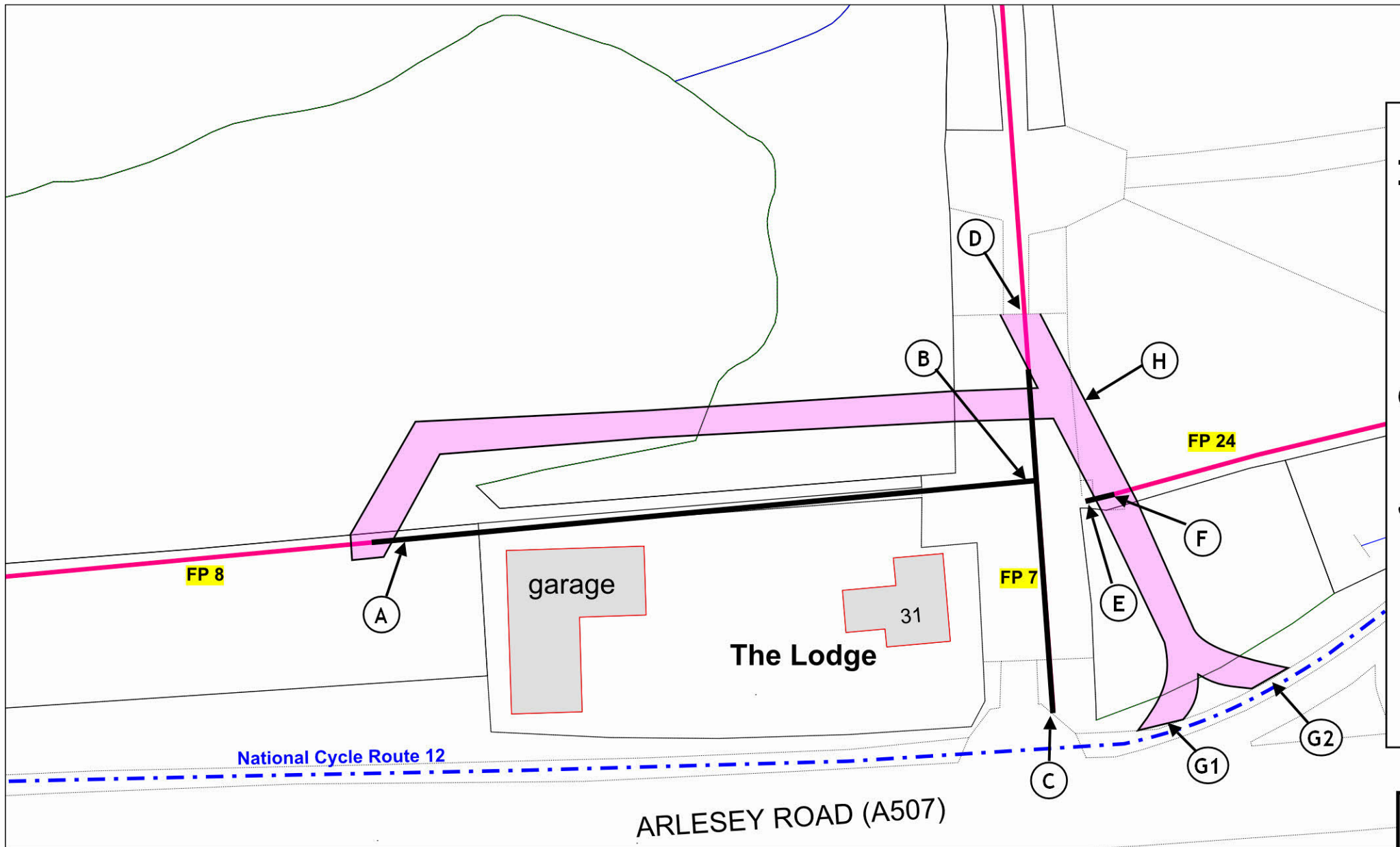
48. Mr. Tribble has applied for diversion of short sections of Footpaths Nos. 7 and 8 to provide a buffer between the footpaths and his home, The Lodge, as he alleges that antisocial behaviour and attempted break-ins have blighted his property.
49. With the exception of a very small area of Footpath No. 8 Mr. Tribble does not own the land over which either footpath passes. An order to divert Footpath No. 7 cannot therefore be made in his interest. As the sought diversion of Footpath No. 7 is also not in the direct interest of the actual landowner, Mr. Curson nor in the interest of the public this part of Mr. Tribble's application must fail.
50. However, an order can be made to divert the section of Footpath No. 8 alongside The Lodge. Whilst this diversion will move the footpath approximately 7 metres further away from Mr. Tribble's current boundary I am not sure whether it will have the desired effect of mitigating the anti-social behaviour and criminal activity that he alleges exists.

## **Appendices**

- Appendix 1 – Footpath diversions initially agreed by Mr. Tribble and Mr. Curson
- Appendix 2 – Proposed diversion based on legislative tests of the Highways Act 1980.

## **Background Papers**

None



HIGHWAYS ACT 1980 - Section 119

**APPLICATION TO DIVERT OF PARTS OF HENLOW FOOTPATHS NOS 7 AND 8**

Footpath No. 8 to be stopped up

**A B**

Footpath No. 7 to be stopped up

**C B D**

Footpath No. 24 to be stopped up

**E F**

Footpath No. 7 to be created

**D H F G**

Footpath No. 8 to be created

**A H**

Unaffected footpaths

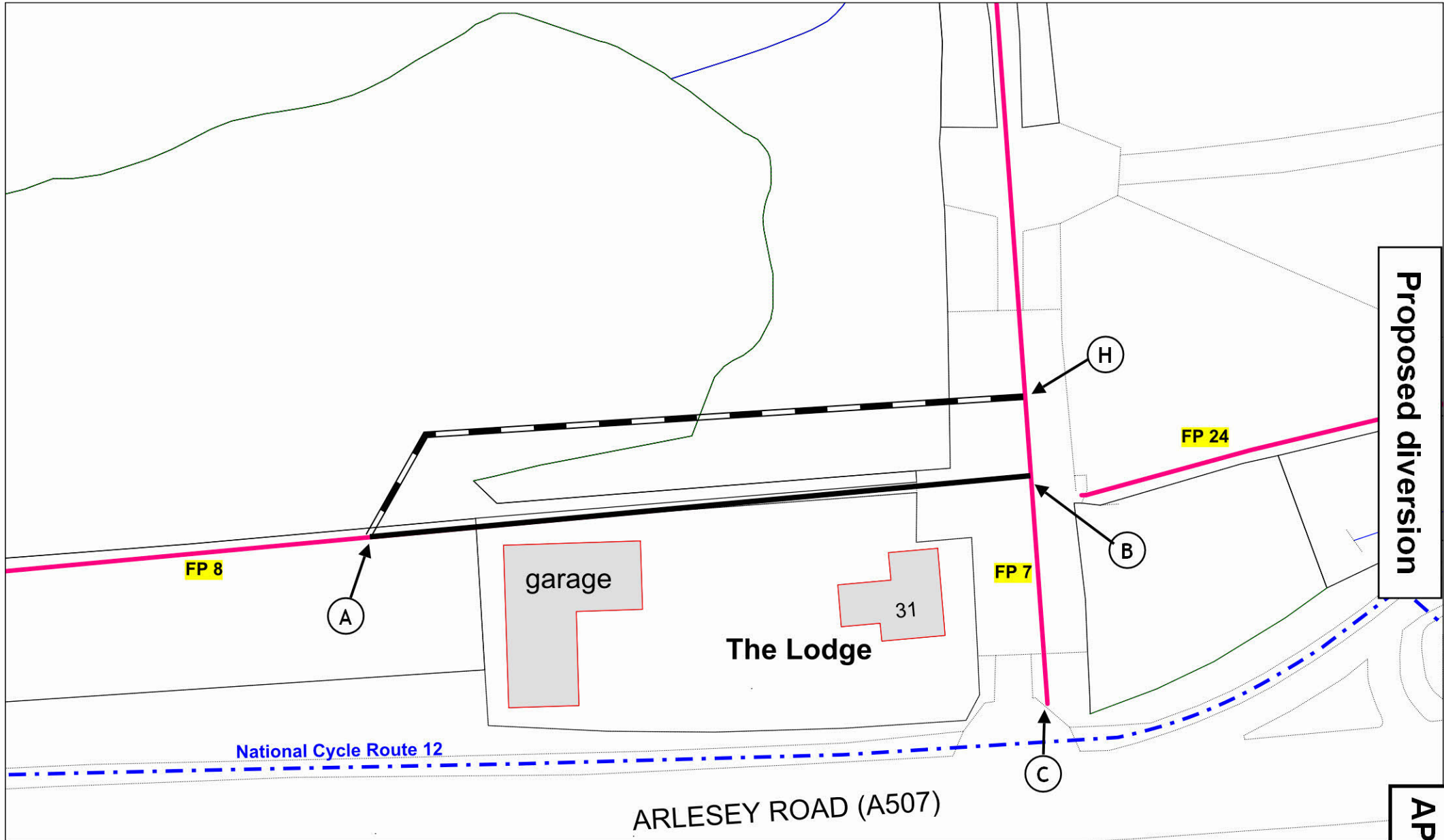


National Cycle Route 12



Date: 23 April 2015

Scale: 1:500



Proposed diversion

APPENDIX 2

HIGHWAYS ACT 1980 - Section 119

**PROPOSED DIVERSION OF PARTS OF HENLOW FOOTPATH NO 8**

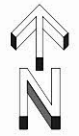


Footpath No. 8 to be stopped up A B

Footpath No. 8 to be created A H

Unaffected footpaths —

National Cycle Route 12 - - -



Date: 23 April 2015

Scale: 1:500