

PLANNING COMMITTEE – 13 NOVEMBER 2002

Report of the Chief Planning Officer

ENFORCEMENT ITEM

Parish: Taunton

1. **File/Complaint Number** E128/38/2002
2. **Location of Site** Footpath to side of 36 Craig Lea, Kingston Road, Taunton.
3. **Names of Owners** Mr & Mrs Jefferies
4. **Names of Occupiers** Mr & Mrs Jefferies
5. **Nature of Contravention**
Erection of fence panel and provision of earth bank.

6. **Planning History**

It was brought to the Council's attention that the footpath provided by the developers of the new development at the former Bishops Fox's school linking Craig Lea and a public footpath to the rear of the development had been closed off. The means of closure consisted of an earth bank with hedging plants and a panel fence positioned on top of the bank. The footpath link had also been tentatively brought into the curtilage of 36 Craig Lea. The owner was informed that planning permission was required for the development and an application was submitted (38/2002/334). It was noticed that since the submission of the application the owner had taken the majority of the path out of the curtilage of No. 36. The applicant withdrew the application on the day of the last Planning Committee indicating that the footpath would not be reopened. (A copy of the report to that meeting is attached as an Appendix.) When the area was originally granted planning permission the permitted development rights were withdrawn in respect of gates, walls, fences and other enclosures. Therefore, the fence and earth bank closing the footpath is unauthorised.

7. **Reasons for taking Action**

It is considered that the provision of the fence and bank results in the loss of a

useful link to the adjacent footpath contrary to the requirements for increased sustainability and alternative modes of travel to the car .

8. Recommendation

The Solicitor to the Council be authorised to serve an enforcement notice and take prosecution action subject to satisfactory evidence that the notice has not been complied with

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1998.

CONTACT OFFICER: Mr J A W Hardy Tel: 356479

KENNETH JEFFERIES

ERECTION OF FENCE ACROSS THE PUBLIC FOOTPATH AND CHANGE OF USE OF THE FOOTPATH AND LAND ADJACENT TO DOMESTIC ADJACENT TO 36 CRAIG LEA, TAUNTON.

22240/26290

FULL PERMISSION

PROPOSAL

Detailed planning permission was granted for the redevelopment of the Bishop Fox's School in 1995. David Wilson Home's scheme included the provision of a footpath link from the development to the existing footpath that runs adjacent to Taunton School playing fields, along the western boundary of the site. This link was subsequently provided on the site. The County Council were not offered this link as part of their S38 discussions. The footpath and adjoining land was subsequently sold to the occupier of 36 Craig Lea. This proposal is for the change of use of the footpath and land into domestic curtilage and the erection of a fence along the western boundary of the site. Prior to selling the footpath David Wilson Homes were informed by the Planning Officer that the link provided for permeability from the site to the existing footpath and that the closure of the link would require planning permission, as would any change of use to a domestic curtilage.

CONSULTATIONS AND REPRESENTATIONS

COUNTY HIGHWAY AUTHORITY current national and regional policy guidance (PPGI 3, RPGI 0) seeks to encourage the use of more sustainable transport modes, in particular, walking, cycling and public transport. These policy documents recognise that walking has the greatest potential to replace short car trips (under 2 km) and cycling offers a good alternative to car journeys under 5 km. The walking strategy of the Local Transport Plan highlights the importance of improving conditions for pedestrians through a number of measures that include:- insuring that the pedestrian network is protected; and creating a network of direct, coherent pedestrian routes. While the footpath adjacent to Craig Lea is unadopted, it forms a useful link to an off-road cycleway and footpath, reducing pedestrian journey times, and is part of the wider pedestrian network. While the applicant indicates that the link is rarely used, the Highway Authority have received numerous complaints from users of the link since its closure. I would therefore recommend refusal of this application for the following reasons:- The footpath adjacent to 36 Craig Lea forms a useful link within the pedestrian network. Incorporation into the domestic curtilage of 36 Craig Lea will permanently remove this link, contrary to the provisions of the Local Transport Plan, PPGI 3 and RPGI 0, which seek to increase walking and cycling through provision and protection of a coherent route network. The County Highway Authority have agreed to adopt the footpath if required with no contribution for a

commuted sum in the circumstances. SOMERSET AND AVON CONSTABULARY there was one recorded crime in Craig Lea in the last year; I have met the applicant about 2-3 years ago and advised that it would be beneficial to close the footpath from a crime prevention point of view. The community beat officer helped the residents to get the exit blocked off as they said they were suffering from vandalism. This vandalism was happening to the fences adjacent the footpath with graffiti on the wall by the exit. Closing the link has made residents feel safer and has designed out crime.

RIGHTS OF WAY OFFICER the issue addressed by the application appears to be incorrect, in legal terms, if the footpath concerned has been adopted. If it has been adopted, then the only option the owners have is to have the footpath extinguished on a legal basis, in this case by the County Council. If the footpath has not been adopted, I cannot see any reason why it cannot be removed without planning permission. However, if planning legislation requires an application to modify a condition of the original planning permission that a footpath was to be adopted, then so be it. We would not have a view, mainly because the additional link, all be it convenient, is not crucial to the improvement of access in general. On another legal point, the back up submissions by police etc., would not carry much weight at a public inquiry if the footpath concerned was a definitive footpath and was to be extinguished. The only criteria that an extinguishment must follow is that the footpath "is not needed for public use". This footpath could easily be proved to be needed for public use. The social problems in the area are one for more effective police action, and nothing to do with the public needs for access for whatever purpose. On balance and to remain consistent in policy, I would move slightly in favour of retention of the footpath. However, I am not privy to the planning implications.

21 LETTERS OF SUPPORT, including a petition with 14 signatures from Peile Drive - teenagers use the area as a meeting place and exhibit antisocial behaviour such as foul language; threatening behaviour; and there is even evidence of drugs; 36 Craig Lea along with other properties in the area have been vandalised, litter causes a problem; the footpath is used by residents of the Kingston Road area for dog walking and dogs have been allowed to foul in front gardens; several owners of properties in Peile Drive have created their own openings and do not need to use the footpath now; the footpath was used as a get away route after our car was broken into, since the closure there have been no incidents of crime in the area other than some continued vandalism of the land where the footpath link was, whilst the footpath provided flexibility of movement for residents it also provided an easy second entry and exit to Craig Lea for non-residents with criminal intent; the Somerset and Avon Police were instrumental in recommending the closure of the path; as a resident of the estate we were not notified about the provision of the footpath link, the residents of Peile Drive did not accept the provision of the link in their area; as adjacent residents we have suffered eggs and gravel being thrown at our windows; youths urinating in our gardens; dog and human excrement in our gardens; being woken up at 4 a.m. by loud youths and an inordinate amount of litter; there is strong police support for blocking off the footpath; whilst the closure of the path will cause some inconvenience residents of the estate will be protected better from crime; an 80 year old neighbour has timed the detour as an extra 4 minutes only (1 minute on a

bicycle); for children cycling to the adjoining school it amounts to 150 m along wide pavements where a cycle could be pushed; anyone from outside the estate will have already had to negotiate Kingston Road to get there; the blocking of the link has removed the problems at a stroke; prior to closing the link we sought advice from the police and planning department; (the Planning Officer's advice was that planning permission would be required); we also carried out a straw poll among neighbours and the majority supported the proposal; the footpath link is not a right of way, the benefit to the majority outweigh the minor inconveniences incurred by all and what I consider to be the largely frivolous objections of a small minority; only a minority of Peile Drive residents use the link to go to town, why did those residents turn down the chance of a link at Peile Drive?

COMMENTS OF THE NEIGHBOURHOOD WATCH CO-ORDINATOR the following unacceptable behaviour has taken place prior to the closure of the link:- a lady was attacked while walking her dog; motorbikes and mopeds have been driven (at day and night times) at dangerous speeds along the cycle path despite a concrete bollard; cyclists have wheeled to the front door of the houses nearest the gap; cyclists have cut corners damaging lavender hedges; human faeces have been deposited in the garden of 36 Craig Lea; condoms have been left nearby; youths have been urinating on a mimosa tree nearby the gap; dog fouling is a problem from a minority of dog walkers; eggs have been thrown twice and gravel once at the window of 37 Craig Lea; the one mother using the link to go to school has left the area; since the closure of the fence there has been no burglaries; problems or anti social behaviour other than the uprooting of plants and bushes and the throwing of a large plant container over the fence; a female cyclist has also expressed her support for the closure of the link as she was concerned about possibly being ambushed by the youths who meet around the gap. This confirms our concern from last year when the neighbourhood watch sign was daubed "this way for drugs, house No 30" occupied at time by an elderly lady. I have spoken to some dog owners who have understood when the situation has been explained to them and are content to walk their dogs elsewhere. The vast majority of Craig Lea residents support the closure as the additional walk is more than compensated by the added security. Living near the gap I have been concerned about people walking aimlessly through, I have used the link but consider that its closure is acceptable, I have been effected by shouting and throwing rubbish into my garden and I have been intimidated when coming home late one night, the closure has stopped skateboarders carrying out their sport, closing the gap has stopped burglars using the path as an escape route, when walking home one night my wife and I were sure three cyclists were going to attack us, they went on to ride up Craig Lea, a few nights later a resident of the area was attacked when exercising her dog in the area, following various anti social incidents my wife is afraid to go out after dark; as the Police Community Safety Team, Taunton Deane Community Initiatives Unit, Local Transport Development Group and the Highway Authority all recognise the validity of the closure of the link I am surprised that the Jeffries have had to make an application; a relative was verbally abused and threatened while putting her car away and empty bottles and half eaten takeaways have been deposited in our hedge; there wasn't a footpath link at that point from the previous school, the provision of the footpath was not a condition of

the original planning permission, the land is now privately owned and maintained by the applicant.

23 LETTERS OF OBJECTION raising the following points:- the footpath provides a much used shortcut to surrounding schools and family, the footpath link has been used for 40 years as there was a right of way through the previous school, outsiders should not be allowed to come in and close off the footpath link, the footpath link provides a safe route for children to school, the footpath should be re-opened and adopted, the footpaths provide an attractive and safer route to town away from traffic, the footpath link supports Taunton's own policy to provide and maintain footpath access throughout the town, alternative provisions should be made to improve the security and safety of residents living nearby rather than denying the public a useful amenity, a major factor in living in this estate was the presence of the footpath shown on the developers maps and it is upsetting to think of it being closed without prior consultation, a locked gate could be provided to enable residents of the estate to continue to use the footpath link, I use the footpath route to cycle to work every day, there are no more undesirable characters in this residential area than anywhere else but I notice that some people seem to find youths (who ever they are) threatening surely that cannot justify the closure of a valued amenity? The closure of the footpath has affected our quality of life as well so those of the surrounding community, I now have to go much further to pick up my grandson from school, If this footpath is allowed to close then others will follow and we will have no footpaths or rights of way as anyone living nearby will object, our gardens back onto the footpath and we have had no trouble over the last 6 years even from "motor cycles and mopeds", we use the lane 3/4 times per day and have never had or seen any trouble, the mugging of a lady who had used the gap took place away from the lane and cannot be attributed to the presence of the gap. Vandalism happens all over Taunton not just at Craig Lea, we have used this footpath to take our son to school for the past three and a half years and now have to drive our son to school instead as Kingston Road is not safe for a 7 year old to cycle along, the footpath is environmentally friendly and provides a lit path for people to walk and cycle along and use Taunton's Cycle/footpath network, the applicants would have been aware of the footpath when buying their houses, I am annoyed that the link was closed without prior consultation, a gate and key system could be installed as I understand this works at French Weir, I regularly use the footpath between 7 a.m. and 9.30 p.m. and have never seen any sign of condoms, syringes, drug dealing, or fouling of the area by dogs; we are not convinced that the closure of the link is the only alternative a straw poll supported the idea of a lockable gate, we were shocked that the link was closed before planning permission but are glad of an opportunity to comment, consultations on the closure of the link have excluded many residents of the estate, we were not aware of any major crime and disorder issues and would be interested to see the actual recorded crime figures and incidents, I have used the path at least 4 out of 7 days in the week and have only once seen a group behaving in a suspicious manner and they moved on when they saw me looking; a well used link will deter undesirables, there must be dozens of other example of footpath links in Taunton will these all be closed? Craig Lea is probably safer than most, the references to "consultation" are misleading we live in Peile Drive and have not been consulted before, what about people who use the link and live further a field?

2 ADDITIONAL LETTER OF OBJECTION have been received that reiterates points referred to in the report and raises the following additional points:- the Council encourage cycle routes and footpaths for environmental, health, safety and amenity reasons; there are many footpath/cycleway links for residents within Taunton so what makes Craig Lea so special? blocking this footpath will set a precedent; the footpath link is now about a quarter of a mile long with no exit/entrance in between; I am unhappy about the way in which people campaigning for the closure have acted; people are likely to sign a petition if a neighbour knocks on the door telling them about an alleged crime wave; the consultation process was selective and does not represent all the residents of Craig Lea and Peile Drive; during the public consultation procedure by the applicant facts were misrepresented; what is the point of having footpaths and cycleways if residents can't access them? references to damaged fencing refers to a 9" high trellis erected along a grass verge to stop dogs fouling the verge, this was an unpractical solution and increased patrolling by the dog warden many have had a greater effect; the police are failing in their duty if they promote a siege mentality to compensate for ineffective policing methods; who will take the responsibility for injuries or fatalities as a result of denying a safe footpath/cycleway by permitting its closure?

POLICY CONTEXT

Regional Planning Guidance 10 and Planning Policy Guidance 13 seek to encourage the use of more sustainable transport modes, in particular walking , cycling and public transport. Walking has the greatest potential to replace short car trips (2 km) and cycling to replace trips of up to 5 km.

Somerset and Exmoor National Park Joint Structure Plan Review Policies STR1 requiring proposals to be a sustainable development. Policy 42 requires the maintenance and extension of the footpath network particularly between residential areas, shops, community facilities work places and schools and by ensuring that improvements to the highway provide for safe use. Policy 44 urban facilities for cyclists should be improved by maintaining and extending the network particularly between residential areas, shops, community facilities, work places and schools and by making the best use of the existing infrastructure. Improvements to the highway should provide for safe use.

Taunton Deane Local Plan Revised Deposit the following policies apply:- H1 governs development within settlement boundaries criteria (A) and (B) require the provision of safe and convenient access by bus, foot or cycles to facilities and employment.

ASSESSMENT

All residents of the estate were notified of the application and site notices displayed adjacent to the site and this has resulted in balanced response from those residents and users of the link.

The applicant has supplied supporting evidence from the Police to highlight that the link should be closed to avoid continued vandalism, anti social behaviour and criminal activity. These documents claim to have undertaken consultations in the area but several objections have made it clear that any such consultation was limited in its extent. I am therefore concerned that a balanced assessment of the situation was not undertaken. The Somerset and Avon Police have commented that there has only been one recorded crime in Craig Lea in the last year. Incidents of vandalism have not been recorded and whilst regrettable and annoying appears more like bad behaviour than serious safety issues. It is an objective of Taunton Deane Borough Council to improve access throughout the town especially to encourage safe alternatives to the car like walking and cycling. The representations show that the link is valued within the local community for access to Taunton School and the town. The County Highway Authority have advised that the closure of the link would be contrary to those objectives as well as the objectives of RPG10 and PPG13. I am concerned that the closure of this footpath for the reasons put forward could set a precedent for the closure of other such links so undermining the objectives of providing for good access around the town other than by the main roads and the likely use of the car. Proposal considered unacceptable

RECOMMENDATION

Permission be REFUSED for the following reason:- the proposal results in the loss of a useful link to the adjacent footpath contrary to the requirements for increased sustainability and alternative modes of travel to the car outlined in RPG10 and PPG13 and would be contrary to the aims and objectives of policy 42 of the Somerset and Exmoor National Park Structure Plan and Policy H1 (A) and (B).

In preparing this report the Planning Officer has considered fully the implications and requirements of the Human Rights Act 1998.

CONTACT OFFICER: 356467 MRS J MOORE

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