

**DOCUMENTS SUBMITTED BY ESSEX COUNTY COUNCIL
TO THE PLANNING INSPECTORATE
(Electronic Submission)**

**IN THE MATTER OF THE DETERMINATION TO CONFIRM
PUBLIC PATH EXTINGUISHMENT ORDER 2024
FOOTPATH 70 WIMBISH
IN THE DISTRICT OF UTTLESFORD
SECTION 118 – HIGHWAYS ACT 1980**

DOCUMENTS REQUIRED BY THE PLANNING INSPECTORATE

1. Electronically sealed Order (there is no paper form of this order) and associated plan
2. Statement of the grounds on which it is considered the order should be confirmed
3. OMA's submission letter
4. Representation to the Informal Consultation and representation (objection) to the order (named)
5. Statement containing the OMA's comments on the objections
6. Copy of the notice publicising the order together with a copy of the advertisement voucher copy
7. Certificate that notices have been published, served and posted on site and at the local offices
8. Certificate that the necessary consultations have been carried out
9. Name and address of every person notified
10. Undertaking that if confirmed, notice will be duly published and served; or if not confirmed notice will be duly served
11. Location map to enable the Inspector to identify the site
12. OMA statement re Inspector access to the land
13. Name and address of the applicant
14. Confirmation that the OMA is supporting the Order
15. Details of the time and place where documents relating to the order will be made available for public inspection
16. Health and Safety questionnaire document
17. Extract from the Definitive Map and Statement
18. Confirmation of no relevant provision within the Essex County council Rights of Way Improvement Plan (ROWIP)
19. PROW Officer's statement and photos with location plan
20. DEFRA Presumptions Guidance
21. Byway 100 Wimbish Prohibition of Motor Vehicles and Horsedrawn Vehicles order

1. Electronically sealed Order and plan

See submitted PDF file:

1-Copy of Made Order inc. plan.pdf

2. Statement of the grounds on which it is considered the Order should be confirmed

This statement explains why in the opinion of Essex County Council (ECC) as the Order Making Authority (OMA) the Order meets the relevant criteria as set out in Section 118 of the Highways Act 1980 and why the extinguishment is expedient on the grounds stated. Please also see Document 19.PROW Officer's statement and photos with location plan.

Footpath 70 Wimbish (PUBLIC PATH EXTINGUISHMENT ORDER 2024).

The applicants, who are also one of the landowners, applied for an extinguishment of a section of the above footpath. The other relevant landowners, who are similarly affected, consented to this proposed change.

The relevant statutory tests were examined in detail and categorical evidence for their applicability was sought by the County Council before agreeing to proceed with the making of the Extinguishment Order. Concerning the main criteria when considering a public path extinguishment:

Before making any extinguishment Order, it must appear to the Council expedient to stop up the path or way on the ground that it is not needed for public use.

Before then confirming any Order, the Council must be satisfied that it is expedient to do so: - a) Having regard to the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and b) Having regard to the effect which the extinguishment of path would have as respects land served by it taking into account the compensations provisions

(a) Whether the path or way to which the public path extinguishment order relates is needed for public use

Footpath 70 runs in a generally south westerly direction between Byways 98 and 100 Wimbish, intersecting with Footpath 67 Wimbish close to its meeting point with Byway 100 (see 1-Copy of Made Order inc. plan.pdf).

It was necessary for the proposal to include retention of a section of Footpath 70 between Footpath 67 and Byway 100 to preserve wider PROW network links, but the access provided by the section of Footpath 70 proposed to be extinguished, is already replicated by that provided by the two byways.

Footpath 70 passes across common land including a small, wooded area, the gardens of three properties, and a field used for animal grazing. Whether travelling between the aforementioned byways (in either direction) or via Footpath 67 to Byway 98 (and reverse), the use of Byways 100 and 98 provide a suitable, convenient alternative and a very similar form of access, which renders the use of Footpath 70 as not needed for public use. Common land rights are unaffected by this order.

Historically, the legal route of Footpath 70 has not been fully available to use and this has generated a very low number of enquiries to PROW Maintenance colleagues. The byways are located within a very rural setting in the hamlet of Lower Green, Wimbish with limited habitation, and are consequently very lightly trafficked, providing safe usage for all PROW users. In addition, the byways do not have any limitations, such as would be required for the section of Footpath 70 proposed to be extinguished (to prevent the ingress/egress of livestock), making them more accessible.

(b) Having regard to the effect which the extinguishment of path would have as respects land served by it taking into account the compensations provisions

The issue of compensation is not applicable as the applicant and the consenting third party landowners are all owners of land over which the section of Footpath 70 proposed to be extinguished runs. They would all be negatively affected by the reinstatement of Footpath 70 where it passes through their gardens and grazing land respectively.

In summary:

The historic unavailability of this footpath (believed by the applicant to have been unused for at least 50 years), relative low level of interest in its reinstatement (prior to the making of this order), provision of adjacent byways as suitable alternative access to the network, and sole objection, support, in the view of the OMA, the confirming of this order. Confirmation of the order is also supported by the DEFRA Presumptions Guidance (see 20-DEFRA Presumptions Guidance.pdf)

3. OMA's submission letter

The Planning Inspectorate
Rights of Way Section
Room 3A Eagle
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Date 14.02.25
Our Ref: Footpath 70 Wimbish
(partial) Extinguishment

Dear Sir/Madam,

Highways Act 1980 – Section 118 Public Path Extinguishment Order 2024 Footpath 70 Wimbish Parish, Uttlesford, Essex

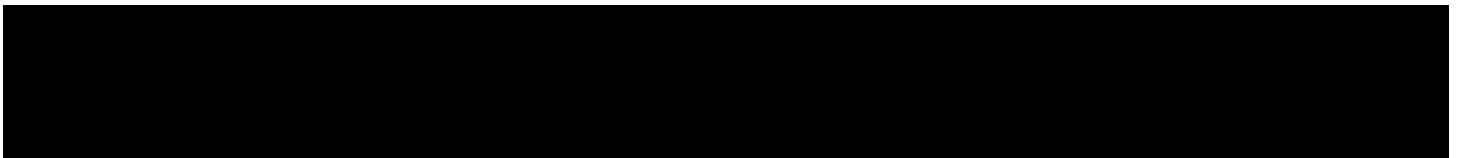
Essex County Council, being both the Order Making Authority and Highway Authority, are writing with regard to the above proposed extinguishment application, which has undergone a statutory consultation period of the order made on 18.07.24. Following the expiry of the statutory consultation period and attempts to negotiate with the sole objector by email the County Council were unable to achieve the withdrawal of the sole, duly made objection.

The County Council having considered the criteria for making and confirming the order are satisfied that the application meets the relevant tests and therefore support the Order. Accordingly, I write to formally request the Secretary of State in pursuance of section 2(2) of Schedule 6 to the Highways Act 1980 determines to confirm the above-mentioned Order. I enclose by email attachments documentation required for the submission of Public Path Orders to the Secretary of State for consideration.

The list of documents follows the order given on The Planning Inspectorate's *'Documents Required By The Planning Inspectorate (Checklist for Order Making Authorities)*.

I would request that where possible the dates below are avoided in respect of possible dates for attendance at an Inquiry. The Council also believes that under current rules, unless the parish council withdraw their objection after referral, which we would encourage in this case, it will be necessary to hold a Public Inquiry.

Dates to avoid:



Yours sincerely

 Public Path Order & Development Officer, Essex County Council

4.a.Representations (Utilities) to the informal consultation

4.b.Parish Council Objection to the informal consultation (includes OMA response)

4.c.Parish Council Objection to the order (includes OMA response)

See submitted PDF files:

04.a.- Informal Consultation and responses Utilities

04.b.- Informal Consultation PC objection & OMA response

04.c.- Made Order consultation and objection (Parish Council)

5. Statement containing the OMA's comments on the maintained objections

The OMA's written responses to the objection letters is included in Document no's 4.b and c.

However, for the sake of clarity the objector's reasons and the OMA's responses to them have been expanded upon below.

Representation (objection maintained) – Wimbish Parish Council

The parish council objected on a number of points which then expanded during the correspondence with them. To more clearly address the points that they raised I have numbered them below in the order in which they were received, at both the Informal and Formal consultation stages. The points are quoted verbatim which may result in a degree of repetition:

Objection reasons given by the Parish Council at Informal Consultation stage:

1. The PC have discussed the content of your email and they have agreed to reinstate the path and do not want to have it closed and it is required for public use.
2. The PC unanimously agree that the footpath should be retained and not extinguished. Although the alternate route is functionally the same destination. The experience of walking of a metalised road or grassland is totally difference and a woody copse.

Objection reasons given by the Parish Council at the Formal Consultation stage:

3. Footpath 70 is a 'public right of way' which the Parish Council and local residents use and enjoy. It would have been used more regularly if the bridge had been replaced by the ECC PROW team. It has been reported a number of times by the PC and residents.
4. The alternative route that has been suggested is a narrow single track made up road used by numerous delivery drivers and other vehicles as a short cut.
5. The path is not close to any houses, but that isn't an acceptable reason for closing the path.
6. The local residents have contacted the Parish Council with their concerns that the path maybe extinguished as it is a Public Right of Way, on the map and it should be open for everyone to use and walk along, even when the ditch is full of water.
7. It is very important to protect and maintain our Public Rights of Ways.

OMA response:

1. The parish council did not state and have not stated why they believed that the footpath is required for public use. The OMA view their statement and the lack of a reason provided by them as an expression of the parish council's desire ('wanting') to keep the footpath, rather than them having identified any clear public 'need' for it to remain open. The OMA acknowledge that under Section 43 of the Highway Act 1980 a parish council can undertake maintenance a public right of way. Their statement that they 'have agreed to reinstate the path,' which was not requested of them, raises the question as to why in the previous 50 years of it being unavailable they had not already exercised this power, and only did so when the applicant applied to have the footpath extinguished. Given that the parish council are able and willing to undertake footpath works when they determine to do so, and that they have been aware of the footpath's unavailability for an extended period of years, the previous inactivity is odd. This is especially so as they assert that the path is 'needed.'
2. The unanimous nature of the parish council's decision to object to the extinguishment order was clarified by them and was duly noted. In the parish council's own words the 'alternate route is functionally the same destination.' This clearly demonstrates that there is no debate or difference of opinion on the matter of the convenience of the use of Byways 98 and 100 as alternative means of access to Footpath 70. Their statement is evidence therefore that Footpath 70 is not 'needed.'

The parish council contrast the experiences of walking on a metalled road, grassland, and a wooded copse. The section of Footpath 70 that can be said to run within a 'wooded copse' is very short, being approximately only 50 metres in length. The remainder of the footpath, which is not described by the in the parish council's comparison, runs through private gardens and across a grazing meadow. The byways have a mixed surface with Byway 98 becoming somewhat more naturally surfaced for a section of its length west of the point where Footpath 70 connects to it. Similarly, Byway 100 becomes more natural in its surface south of Flora Cottage. Delivery vehicles are less likely to use these more rural sections of the byways as they can gain access to properties more easily from the roads at either end rather than traversing the whole length of the byway/s. Even so, both byways are lightly trafficked and have grass areas to step onto if required. There are also signs saying that Byway 98 is 'unsuitable for H.G.V.s' located

at the western end of the byway and at the other end just past where Footpath 70 connects to the byway (see Document 19. Prow Officer's statement and photos with location plan). Byway 100 is also subject to a seasonal closure (1st November to 31st March annually) by means of a Prohibition of Motor Vehicles and Horses-drawn Vehicles (exc. solo motorcycles) order, which limits vehicle usage to residents, deliveries and emergency services (See Document 21.).

3. The parish council state that the public use and enjoy Public Footpath 70 while simultaneously referencing the lack of a footbridge to facilitate this use. It is fully acknowledged that Footpath 70 is a public right of way, however, this does not preclude a landowner or landowners from applying to extinguish a part of it under Section 118 of the Highways Act 1980. It seems likely in making this statement that the parish council either do not accept or do not agree with a landowner's right to make such an application. As the footpath required vegetation clearance through a copse and the installation of a bridge, the claims of previous public use and enjoyment are called into question. In the PROW Officer's statement, it is acknowledged that enquiries have been received by the PROW Maintenance team concerning this footpath, though in a number and over a period of time that would not appear to indicate any particularly strong public feeling. The parish council have also advised that they have reported issues on this footpath but have not until now used their own powers to attempt any form of reinstatement. This again raises the question as to why in the intervening 50 years or so of it being unavailable the footpath's reinstatement was not considered a priority by them if the need for it was genuine, and not something that they chose to address using their own powers.

4. The alternative route is, as the parish council are aware, made up of sections of two byways open to all traffic (B.O.A.T.) and not roads. The likelihood, given the relatively remote location, the lack of onward connections, and the small number of houses in the hamlet, of their being used by 'numerous delivery drivers and other vehicles as a short cut' is low. The OMA maintain that while vehicles can and do use the byways or sections thereof, these are lightly trafficked byways, which provide grassed areas to step onto and are already well used by walkers and other non-vehicular PROW users without any unaddressed reported issues, and are perfectly wide enough for their multi-user status.

5. The parish council state that 'the path is not close to any houses, but that isn't an acceptable reason for closing the path.' The OMA would respectfully disagree on both counts. The footpath passes through the gardens of three separate properties, Midfield, Stocks Cottage and Flora Cottage. The distance to the actual property buildings varies but most people would think it reasonable to consider the gardens as intrinsically belonging to these properties, and being for the use and enjoyment of the property owners. It is likely to be widely accepted by most people that the presence of a PROW within a garden, providing access for the public at any time can give rise to understandable concerns from householders in respect of privacy and security, especially but not limited to those properties where children live or visit.

The DEFRA Presumptions Guidance for order making and confirming authorities (see - 20-DEFRA Presumptions Guidance.pdf) supports the above argument. The guidance was supplied as part of the formal consultation sent to the parish council by email, and consultees' attention was drawn specifically to it. However, this response from the parish council would imply that they either do not accept or acknowledge its importance in an order confirming authority's determination of an order. The relevance of the guidance was raised specifically during the email negotiations with the parish council following their

objection. Their reply in respect of that was *'The PC disagree.'* The OMA accept that two parties can interpret guidance differently, but our view remains that the relevance of the information in the guidance, and most specifically those sections quoted below, is inarguable, and therefore the conclusion formed is that the parish council have adopted a position that implies that they disagree with the guidance itself.

Page 4 of the guidance clearly sets the applicability of the supplementary guidance to this Section 118 application.

'The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.

The guidance will give authorities more scope to confirm orders made in the interests of the landowner in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.'

Sections 6a-d on Page 5 of the guidance are particularly relevant to this extinguishment order, but have not, in the responses provided, been given due consideration by the objector:

'6. Even where a public path through a private garden or farmyard has existed for centuries, and perhaps even pre-dates the use of the land for these purposes, there may be one or more reasons why its presence could be problematic for the landowner:

- a. A reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same contained space;*
- b. Greater concerns today than in previous eras about the security of children or property in such situations;*
- c. An increased use of public rights of way for general leisure and recreational use rather than local people using them to get around the locality, particularly where rights of way are promoted by local authorities.*
- d. A concern that having a public path close to the house has a negative impact on the value of the property;'*

To remove any doubt as to the applicability of the guidance to this order, Section 7a on Page 6 is abundantly clear:

'7. This guidance applies where a public right of way passes through:

- a. A garden or curtilage of a residential dwelling'*

The decisions that should be taken by order making and confirming authorities in such a situation are dealt with in Sections 9 and 10 on Page 7:

'9. In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given. In relevant circumstances, the duty on authorities to prevent crime and anti-social behaviour under section 17 of the Crime and Disorder Act 1998 may be a consideration.

10. The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests. There are different tests for extinguishment and diversion; these are set out in s.118 and s.119 (respectively) of the Highways Act 1980. The relevant web links are appended to this guidance'

In our on-site assessment of the Section 118 application the PROW Officer and I were clear that the provision of a suitable alternative access by means of Byways 98 and 100, taken in consideration with the DEFRA Presumptions Guidance and the applicant's privacy and security concerns (as directly addressed in that guidance), when combined fully supported the making of an extinguishment order.

Sections 11 and 12 of the guidance deal with diverted and replacement PROW respectively. Unfortunately, alternative new routes, which would facilitate similar access, and which do not pass through private property gardens do not exist at this location. Fortunately, Byways 98 and 100 already fulfil that access need.

6. As part of the formal, public consultation, notices were placed on site and on our website and an advert was placed in a local newspaper. The parish and district councils were also asked to make the Public Path Order and associated notice available for public perusal at their offices or on boards located close to their offices. The notices also invited requests by email to make an appointment to view the order and notice at County Hall in Chelmsford or to have it emailed to interested parties. Despite these measures, which could reasonably be expected to reach interested parties, the parish council were the sole objectors to this extinguishment order. Clearly, public rights of way as shown on the Definitive Map and Statement should be available to be used. However, in considering where and when best to exercise their enforcement powers and maintenance responsibilities, PROW Maintenance and Enforcement colleagues had to consider the environmental and wildlife habitat impact of reinstating the legal route of the footpath through the wooded common land section, which would have required the clearance of a path through trees and vegetation, as well as the length of time that the footpath had been unavailable and unused, in the context of the application that had then been made to extinguish it. The parish council have stated that they have cleared the footpath, which was done without prior notice to the Highway Authority, but they have not advised what steps, if any, were taken prior to those works to ascertain what wildlife habitats were in that location and what if anything was done to mitigate the actions of the work they undertook. It is also not clear that having exercised their powers under Section 43 of the Highway Act 1980 to undertake this work why they did not then install a suitable ditch crossing if they were certain that the footpath was indeed needed for public use.

7. The Highway Authority have a statutory duty to protect and assert the public rights of way network. This, however, is not at odds with the right by landowners to apply to divert or extinguish PROW in their interests, nor does it prevent consideration by the OMA of such applications under the relevant legislation, and also the criteria within the Presumptions Guidance. The parish council's statement suggests a position that changes to the network should simply not take place. Such a position is not supported in law or practical, and many public path orders are successfully processed either unopposed or after referral to the Planning Inspectorate each year both in Essex as well as elsewhere in the country.

6. Copy of the notice publicising the order together with a copy of the newspaper cutting

See submitted PDF file:

6-Copy of notice publicising the order plus newspaper cutting.pdf

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

I hereby certify that:

1. A Notice in the form numbered 1 of Schedule 2 to the Public Path Orders Regulations 1993[Si 1993 No. 11] in respect of Orders under the Highways Act 1980 was published in the Saffron Walden Reporter on 8th August 2024. The time allowed for objections was not less than 28 days from date of publication of the Notice and the last date for objections was 5th September 2024.
2. Notices in form 1 referred to above, were duly served on every owner, lessee and occupier of the land to which the Order relates, Uttlesford District Council, Wimbish Parish Council and prescribed persons as specified in Schedule 3 of the said Regulations. The Notices were served by email on 8th August 2024.
3. A copy of the Order and Map were uploaded to our website (<https://www.essexhighways.org/public-path-notices>) on 7th August 2024. It was also specified in the site notice and newspaper advertisement that copies of the order and notice could be requested to be posted or viewed by emailing publicpathorders@essexhighways.org to arrange a suitable time to inspect the documents quoting the Order title. Documents can be made available for inspection 8.30am-4.30pm Mon-Fri at Essex County Council, County Hall, E block main reception, Market Road, Chelmsford if so required following the current social distancing restrictions.
4. A copy of the Notice and Plan were posted on site on 8th August 2024 by [REDACTED] Area Public Rights of Way Officer.

[REDACTED]
Public Path Order & Development Officer
Essex County Council

8. Certificate that the necessary consultations have been carried out (other local authorities and statutory undertakers)

I hereby certify that:

1. Uttlesford District Council, Wimbish Parish Council, statutory undertakers, owners and occupiers of affected land and prescribed persons as specified in the Regulations were consulted informally on 10th April 2024. Note: the Made Order consultation took place on 8th August 2024.
2. Those responses received from statutory undertakers confirmed that no apparatus would be affected by the proposed diversions.
3. No comments as were received from the District Council, Members of the public or other statutory and ECC policy consultees.


Public Path order & Development Officer
Essex County Council

9. Name and address of every person, council or prescribed organisation notified under

- (i) paragraph 1(3)(b)(i), (ii) and (iv) of Schedule 6 to the 1980 Act and Schedule 3 of SI 1993 No.11 Highways England and Wales, The Public Path Orders regulations 1993;

See submitted PDF file:

9-Name and address of every person notified under Schedule 6 of the 1980 Act.pdf

10. Undertaking that if confirmed, notice will be duly published and served; or if not confirmed notice will be duly served

Essex County Council, hereby undertakes as the relevant order making authority for the area of land in question, in accordance with the requirements of the Planning Inspectorate the following:

That if the aforementioned Highways Act Order to extinguish a section of Footpath 70 Wimbish is confirmed by the Secretary of State, the Council will duly publish and serve notice of the same or if not confirmed notice to that effect will be duly served in accordance with the directions of the Secretary of State

██████████ Public Path Order & Development Officer
Essex County Council

11. Location map to enable Inspector to locate the site

The extinguishment of Footpath 70 Wimbish is located at;

Lower Green, Wimbish, between Byways 98 and 100 Wimbish, CB10 2XH

See submitted PDF file:

11-Location map Footpath 70 Wimbish.pdf

12. OMA statement re Inspector access to the land

See submitted PDF file:

12-OMA statement re Inspector access to the land

HIGHWAYS ACT 1980 SECTION 118

**PUBLIC PATH EXTINGUISHMENT ORDER 2024
FOOTPATH 70 IN THE PARISH OF WIMBISH
IN
THE DISTRICT OF UTTLESFORD**

**STATEMENT RE INSPECTOR TO ACCESS LAND
AT THE ABOVE RIGHT OF WAY**

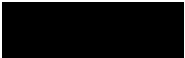
Footpath 70 Wimbish is recorded as a public right of way of the Definitive Map and Statement. As such the Planning Inspector and accompanying parties have an existing right of access to the Right of Way and the land around it (to overcome obstructions) for the purpose of investigating and determining the objection lodged in respect of the Essex County Council Public Path Extinguishment Order for parts of Footpath 70 in the parish of Wimbish in the District of Uttlesford. This also applies to Byways 98 and 100 Wimbish, which the OMA contend provide the access that renders Footpath 70 not needed for public use.

13. Name and address of the applicant

14. Confirmation that the OMA is supporting the order

Essex County Council as the Order Making and Highway Authority hereby confirms it is supporting the order as made to extinguish part of Footpath 70 in the parish of Wimbish.

We also confirm the County Council will continue to support the order should the matter be dealt with by Inquiry or Hearing.


Public Path Order & Development Officer
Essex County Council

15. Details of the time and place where documents relating to the order will be made available for public inspection by the authority

The documents relating to the Order will be made available for public inspection on Essex Highways website at: <https://www.essexhighways.org/getting-around/opposed-orders>

Copies of the documents relating to the order can also be made available to view at Essex County Council Offices, County Hall, E block main reception, Market Road, Chelmsford, Essex CM1 1HQ between the hours of 8.30am to 4.30pm Monday to Friday, or posted or emailed (subject to a recipients' email file size limitations). To arrange to view or be sent the documents, requests should be submitted by email to publicpathorders@essexhighways.org

16. Health and Safety issues questionnaire

Health and safety at the site questionnaire

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

Footpath 70 is not fully reinstated. It currently lacks a ditch crossing.

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

There may be livestock in one of the fields over which Footpath 70 runs.

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

The northern part of the footpath is visible from Byway 98 Wimbish and the southern section from Footpath 67 and Byway 100 Wimbish. The site is remote in as much as it is not directly accessible from an adopted carriageway, only from the aforementioned PROW.

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?

Ofcom's mobile availability checker shows that there is likely to be outdoor coverage for all networks around the footpath. We have been unable to locate any nearby public telephones.

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

The footpath is accessible from Byways 98 and 100. Along sections of Byway 98 there are wide grass verges that it might be possible to park on. (See Document 11.)

There are bus stops (The White Hart) located at Rowney Corner, Wimbish on Thaxted Road/B184 that would provide services to Saffron Walden. However, These are located some distance from the footpath and would necessitate a degree of road walking. Saffron Walden's mainline railway station is not actually located in Saffron Walden and it is likely that journey to the site by car is the only practical option.

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

None known of.

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

Fuel, toilet facilities and food and drink are most closely available at the Tesco Superstore on Radwinter Road, Saffron Walden located to the north of the site.

17. Extract from the definitive map and statement;

See submitted PDF file:

18-Extract from the Definitive Map and Statement.pdf

18. Copy of relevant part of the County Councils Rights of Way Improvement Plan;

See submitted PDF file:

20-Confirmation of no relevant provision with the Essex ROWIP

18. Confirmation of no relevant provision with the Essex ROWIP

In the view of the Order Making Authority there are no relevant provisions within the Essex Right of Way Improvement Plan (ROWIP) that would apply to the proposed PROW changes in this extinguishment order.

19. PROW Officer's Statement and photos with location plan ;

See submitted PDF file:

19-PROW Officer's Statement and photos with location plan.pdf

Public Rights of Way Officer STATEMENT

I, [REDACTED] c/o of Essex County Council, County Hall, Market Road, Chelmsford, Essex

WILL SAY as follows:

- I have been employed (full time) by Ringway Jacobs as a Public Rights of Way (PROW) Officer since January 2019. At the time of this application, I am responsible for maintaining the network within the District of Uttlesford. This involves assessing and prioritising enquiries I receive, initiating maintenance work by liaising with our maintenance supervisor and landowners and requesting underground utility searches. I also undertake first line enforcement for non-compliance issues and escalate matters to the PROW Enforcement & Liaison Officer where required for formal legal action. Although I have no direct involvement with the management of budgets, I always strive to provide the best value for money and prevent financial burdens for the organisation. It is therefore often the case that my colleagues within the Definitive Map & Records Team request my attendance at site visits to determine the suitability of a proposed diversion or extinguishment. I am also able to provide knowledge on the local demographic, the types and frequency of users on a particular PROW and common issues reported.

Background

The proposed extinguishment of the relevant section of Footpath 70, Wimbish, has been applied for by [REDACTED] the landowner of the property [REDACTED] located to the north of this section. The primary reason for the application is to maintain privacy and security within his garden.

This section of the footpath has been obstructed and unavailable for public use for many years due to overgrown vegetation on the adjacent wooded, common land to the north and a missing footbridge where the path crosses a ditch between three properties. Since our records began, the enquiry reporting system used by Essex Highways has received a total of seven enquiries related to the obstruction, with the first recorded on 08/10/2018.

The clearance and reopening of this section of the footpath was initially investigated by the previous PROW Officer in June 2020. However, progress was halted during the COVID-19 pandemic. I revisited the issue in 2022 and conducted a site meeting with [REDACTED] (PROW Enforcement Officer) and [REDACTED] (the landowner). Following discussions, [REDACTED] decided to apply for the extinguishment of the footpath, a proposal which we supported given the provision (via the byways) of alternative PROW routes.

Assessment of the Proposed Extinguishment

As outlined in the background, this section of the footpath has been inaccessible for many years. An alternative route is available via Byway 98 and Byway 100, Wimbish, which are open to all traffic and experience light vehicular usage, primarily from residents and delivery vehicles.

Byway 98, Wimbish: This route is a hard, all-weather surface with a wide grass verge. We have received five enquiries related to its surface condition and reporting that the local postcodes can sometimes direct vehicles by satnav along the byway. Surface repairs were carried out in 2018 and again in 2023, ensuring that it remains in a suitable condition for all users.

Byway 100, Wimbish: This route consists of a wide, natural grass surface. It is closed to motorised vehicles during the winter months by means of a Prohibition of Motor Vehicles and Horses and Carriages order and remains in good condition.

The difference in distance between the proposed extinguishment route and the alternative route is minimal. The section of Footpath 70 proposed for extinguishment measures approximately 520 meters, while the alternative route along the byways is approximately 640 meters. Reinstating this section of Footpath 70 would significantly impact the privacy and security of the three properties whose gardens it passes through.

Furthermore, retention of the section of Footpath 70 proposed to be extinguished would not provide any additional connectivity to the wider PROW network that cannot already be achieved via the alternative route using Byways 98 and 100.

In conclusion, I determine that the proposed extinguishment of this section of Footpath 70 would not detract from accessibility for walkers in the area, particularly as the route has been unavailable for many years with limited interest from users. Additionally, the extinguishment would address concerns regarding privacy and security for the three affected homeowners and the grazing meadow through which the footpath passes.

PROW Officer's photos & location plan

Approximate photo locations – numbered:



H.G.V sign at location 2:



Byway 98 - Slightly to the east of location 2:



Further east to the last location, just before the first house:



Next to the last house looking back towards location 2:



Close to location 3:



Close to location 3:



Close to location 3:



20. Defra Presumptions Guide;

See submitted PDF file:

20-Defra Presumptions Guidance



Department
for Environment
Food & Rural Affairs

Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises

Date: August 2023

Version: 1.0

Please note

1. Sections 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981 have not yet been commenced and are not in force.
2. Therefore, this guidance currently applies only where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980.
3. Defra will inform local authorities in good time prior to commencing 118ZA and 119ZA of the Highways Act 1980 and section 54B of the Wildlife and Countryside Act 1981.

We are the Department for Environment, Food and Rural Affairs. We are responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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Extracts from Hansard 23 March 2016

As a Government Minister, Baroness Williams of Trafford made the following statements:

“The right to apply will be supplemented by guidance that will effectively act as a presumption to divert or extinguish public rights of way that pass through the gardens of family homes, working farmyards or commercial premises where privacy, safety or security are a problem.

The guidance will give authorities more scope to confirm orders made in the interests of the landowner in circumstances where a right of way may cause hardship because it goes through the garden of a family home, a working farmyard or other commercial premises.

I am happy to reaffirm the commitment made by the previous Government that we will review, within two years of implementation of the reforms package, how effective the right-to-apply provisions and the accompanying guidance have proved to be. The review will send a message to authorities that the Government are determined that the new policy should work and that if guidance does not bring about sufficient changes, we will consider the introduction of further measures.”

Introduction

1. This guidance sets out Government policy on changes to public rights of way through gardens and curtilages of private dwellings, working farmyards and other commercial premises. It sets out how local authorities should respond when considering diverting or extinguishing public rights of way under s119ZA and s118ZA of the Highways Act 1980, or when considering making a ‘modification consent order’ under section 54B of the Wildlife and Countryside Act 1981. It also applies where local authorities choose to consider diverting or extinguishing a right of way under s119 and s118 respectively of the Highways Act 1980. It should be read in conjunction with all other relevant guidance, including rights of way Circular 1/09 (or as revised) and sections 118, 119, 118ZA and 119ZA of the Highways Act 1980 and Section 54B of the Wildlife and Countryside Act 1981; the relevant web links are appended to this guidance.

Context

2. The majority of public rights of way cross privately owned land. In general, members of the public and farmers/landowners are used to the concept and see no inherent inconsistency between the fact that land may be privately owned and the presence of public routes across it for both passage from A to B, and enjoyment of the countryside and the natural environment.

3. However, the general view of both groups can change markedly in situations where public rights of way pass through contained spaces such as private gardens, farmyards or commercial premises.
4. Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner, or potentially disrupting, or being endangered by, activities within a farmyard or commercial premises. Such path alignments can deter people from exercising the public's right to use the path.
5. The less contained such a space is, the fewer the public's concerns tend to be. People are used to walking past a house along an adjacent road or pavement, and this feels acceptable because they are clearly outside its visible domain. The degree of proximity can also make a big difference. Few people are troubled by using public paths across privately owned land around a house or farm, so long as they feel they can keep a reasonable distance from it. But the more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to feel comfortable using it.
6. Even where a public path through a private garden or farmyard has existed for centuries, and perhaps even pre-dates the use of the land for these purposes, there may be one or more reasons why its presence could be problematic for the landowner:
 - a. A reasonable expectation of being able to relax in the garden or spend time with family and friends without strangers appearing in the same contained space;
 - b. Greater concerns today than in previous eras about the security of children or property in such situations;
 - c. An increased use of public rights of way for general leisure and recreational use rather than local people using them to get around the locality, particularly where rights of way are promoted by local authorities.
 - d. A concern that having a public path close to the house has a negative impact on the value of the property;
 - e. Farmyards or commercial operations putting the public potentially at risk, or being regularly disturbed, because of the limited space within which a route passes.

Guiding principles

7. This guidance applies where a public right of way passes through:
 - a. A garden or curtilage of a residential dwelling
 - b. a farmyard or
 - c. other commercial or industrial premises
8. It does not apply to gardens, dwellings or commercial premises which do not have the necessary permission for the current use of the land (most land and property will have an authorised use, either by way of existence of that use prior to the Town and Country Planning Act 1947 or, post 1947, either by way of an implemented planning permission or an authorised use as a consequence of a relevant period of use).
9. In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given. In relevant circumstances, the duty on authorities to prevent crime and anti-social behaviour under section 17 of the Crime and Disorder Act 1998 may be a consideration.
10. The order-making authority should therefore be predisposed to make, and the confirming authority will be similarly predisposed to confirm, an order if it satisfies the respective relevant legislative tests. There are different tests for extinguishment and diversion; these are set out in s.118 and s.119 (respectively) of the Highways Act 1980. The relevant web links are appended to this guidance.
11. In such circumstances, it is in the public interest that any change to remove or reduce the impacts on the property owner or occupier of the existing public right of way should, wherever possible, involve diversion or replacement of the way rather than extinguishment alone. Before making an order, authorities should consider all the options available to them and/or to the landowner, and should be open to using the combination of powers, agreements and management arrangements that best suit the circumstances, whether mentioned below or not.
12. These options include:
 - a. Diversion of the right of way onto land already owned/occupied by the owner/occupier.
 - b. Diversion of the right of way onto other land –
 - i. either by agreement with that landowner, or

- ii. where agreement is not forthcoming, using powers under s119 (5) to require the owner or occupier to underwrite compensation payable to a third party.
- c. Concurrent extinguishment of the right of way and creation of an alternative route under s118 and s25 and/or s26 Highways Act 1980 –
 - i. on land already owned/occupied by the owner/occupier, or
 - ii. on other land by agreement with that owner/occupier, or
 - iii. using the power under s26 to create a route across other land, bearing in mind the provisions of s28 of the Act.
- d. Extinguishment of the right of way where other existing rights of way (including carriageways) would meet the need of the public for access
- e. Extinguishment of the right of way where an existing path is not needed for public use. (For the purposes of section 118, in order to be not needed for public use, a public right of way does not necessarily have to be unused. In assessing non-use, authorities should disregard any temporary circumstances that prevent or diminish the use of the way, such as obstructions).

13. Authorities should also consider:

- a. The potential for improving a path so diverted or replaced (for example, by replacing stiles with gates).
- b. Where a route is to be extinguished, the scope for the owner/occupier to defray the cost of improving an existing alternative route or of creating an alternative route

Conclusion

14. In determining an application to which this guidance applies, it is for the authority to consider the case on all its merits taking into account all the statutory requirements and available guidance. In making its decision as to whether the existing path should be diverted or extinguished, an authority should consider in particular the impact of the existing path on the property owner and/or occupier against the benefit that having the right of way through the land brings to the public, taking account of this guidance.

Appendix

Links to legislation referred to in the guidance

Highways Act 1980

Section 25: <https://www.legislation.gov.uk/ukpga/1980/66/section/25>

Section 26: <https://www.legislation.gov.uk/ukpga/1980/66/section/26>

Section28: <https://www.legislation.gov.uk/ukpga/1980/66/section/28>

Section118: <https://www.legislation.gov.uk/ukpga/1980/66/section/118>

Section 118ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/118ZA>

Section 119: <https://www.legislation.gov.uk/ukpga/1980/66/section/119>

Section 119ZA: [not yet commenced]

<https://www.legislation.gov.uk/ukpga/1980/66/section/119ZA>

Wildlife and Countryside Act 1981

Section 54B: [not yet commenced, see Schedule 7 of the Deregulation Act 2015]

<https://www.legislation.gov.uk/ukpga/2015/20/schedule/7/enacted>

Town and Country Planning Act 1947

<https://www.legislation.gov.uk/ukpga/1947/51/enacted>

Crime and Disorder Act 1998

Section 17: <https://www.legislation.gov.uk/ukpga/1998/37/section/17>

21. Wimbish Byway 100 Prohibition of Motor Vehicles and Horsedrawn Vehicles order;

See submitted PDF file:

21- Wimbish Byway 100 Prohibition of Motor Vehicles and Horsedrawn Vehicles order

The Essex County Council (Byway 100, Wimbish; Byway 1, Little Henny/Byway 13, Middleton; Byway 61, Willingale (Lucas Lane); Byway 3, Pentlow and Hoe Lane; Byway 24, Broxted/Byway 99, Thaxted/ Byway 22, Tilty (Delfits Lane)) (Prohibition of Motor Vehicles and Horse Drawn Vehicles) Order 2019


The Essex County Council ("the Council") in exercise of its powers under Sections 1(1), 2(1) and 3(2) of the Road Traffic Regulation Act 1984 ("the Act") and of all other enabling powers, and after consultation with the Chief Officer of Police in accordance with Part III to Schedule 9 to the Act, hereby makes the following Order:-

1. In this Order
"motor vehicle" has the same meaning as in Section 136 of the Act of 1984.
"motorcycle" means a mechanically propelled vehicle not being an invalid carriage with less than four wheels and the weight of which unladen does not exceed 410 kilograms, as defined in Section 136(4) of the Act.
2. This Order shall be cited as The Essex County Council (Byway 100, Wimbish; Byway 1, Little Henny/Byway 13, Middleton; Byway 61, Willingale (Lucas Lane); Byway 3, Pentlow and Hoe Lane; Byway 24, Broxted/Byway 99, Thaxted/ Byway 22, Tilty (Delfits Lane)) (Prohibition of Motor Vehicles and Horse Drawn Vehicles) Order 2019 and shall come into operation on 25 January 2019.
3. Save as provided in Article 4 and 5 of this Order, no person shall cause any motor vehicle or horse drawn vehicle to proceed in the length of Byway 100, Wimbish; Byway 1, Little Henny/Byway 13, Middleton; Byway 61, Willingale (Lucas Lane); Byway 3, Pentlow and Hoe Lane; Byway 24, Broxted/Byway 99, Thaxted/ Byway 22, Tilty (Delfits Lane) in the Districts of Uttlesford, Epping Forest and Braintree as specified in the Schedule to this order (hereinafter referred to as the said length of byway) between the annual period of 1 November and 31 March.
4. Nothing in Article 3 of this Order shall apply so as to prevent any person from causing any motor vehicle to proceed in the length of byway specified in the Schedule to this Order if the vehicle is a solo motorcycle.
5. Nothing in Article 3 of this Order shall apply so as to prevent any person from causing any motor vehicle to proceed in the length of byway specified in that Article if the vehicle:-
 - (a) is being used for the conveyance of goods or merchandise to or from any premises situated on the said length of byway;
 - (b) is being used for the purposes of access to or egress from any premises situated on or adjacent to the said length of byway;
 - (c) is being used for fire and rescue, police or ambulance purposes, if the observance of that provision would be likely to hinder the use of that vehicle for the purpose for which it is being used on that occasion;
 - (d) is being used in connection with any of the following operations to or from any premises situated on or adjacent to the said length of byway, namely:-
 - (i) building or demolition;
 - (ii) the removal of any obstruction to traffic;
 - (iii) the maintenance, improvement or reconstruction of those lengths of byway;

- (iv) the laying, erection, alteration or repair in or on land adjacent to the said length of byway, of any sewer, or any main, pipe or apparatus for the supply of water, gas or electricity, or any telegraphic line; or
 - (e) is being used in the service of or contracted to a local authority or water authority in pursuance of statutory powers or duties.
 - (f) in any case where the person in control of the vehicle is required by law to stop, or is obliged to do so to avoid an accident, or is prevented from proceeding by circumstances beyond his/her control.
6. The Council are satisfied that for avoiding danger to persons or other traffic using the road to which the order relates and for preserving or improving the amenities of the area through which the byways run, it is requisite that Section 3(1) of the 1984 Act should not apply in relation to this Order.

Sealed with the Common Seal of the Essex County Council this Eighteenth day of January Two thousand and Nineteen.

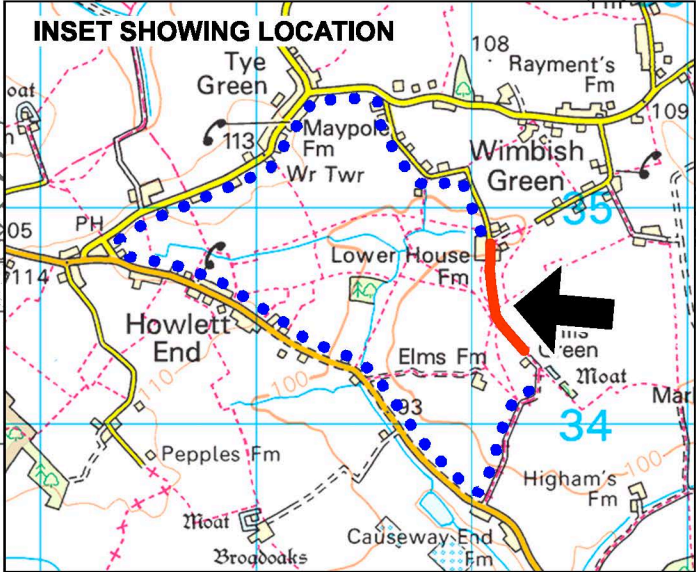
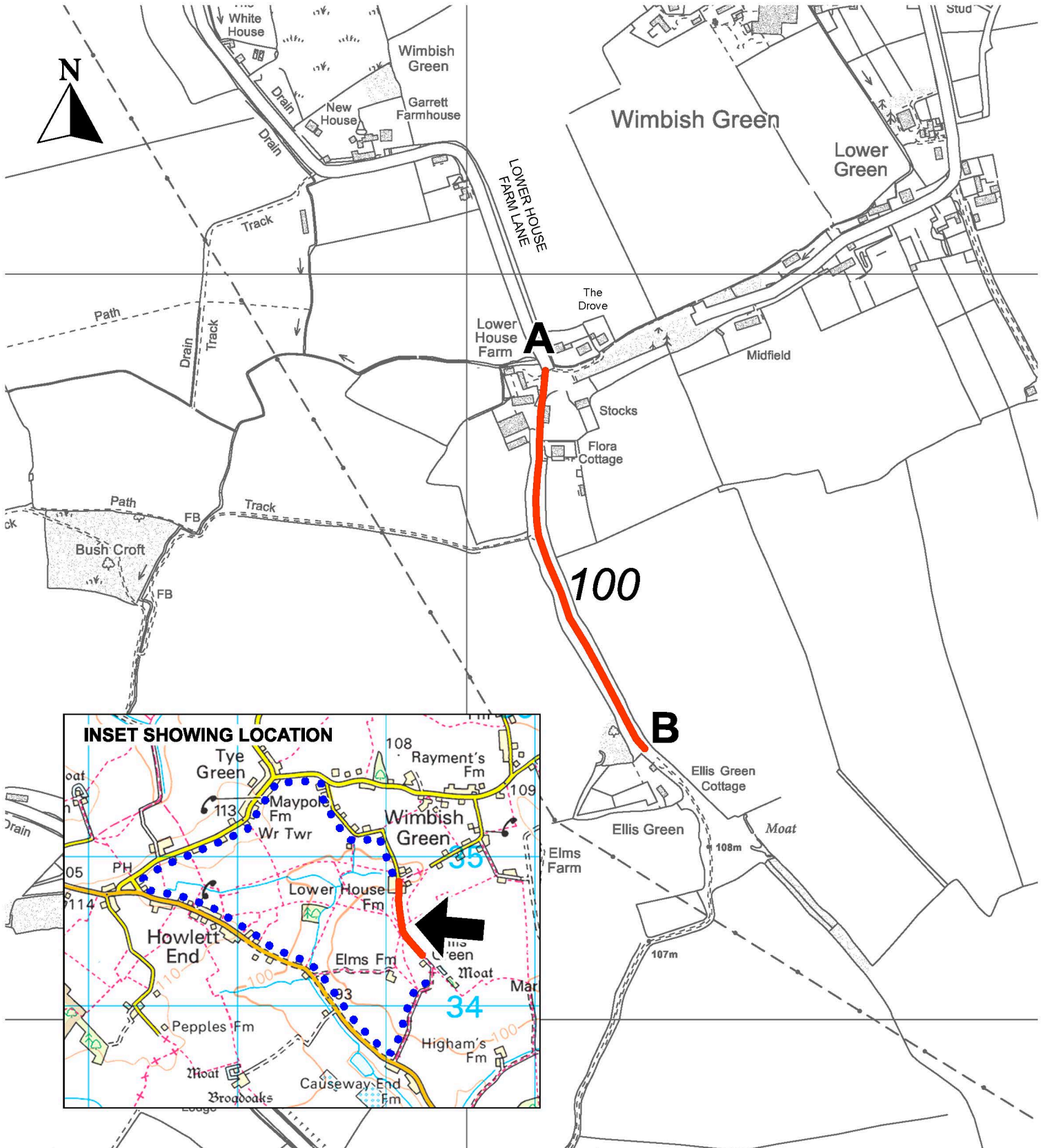
THE COMMON SEAL of the)
 ESSEX COUNTY COUNCIL was)
 hereunto affixed in the presence of:-)


 R DONALDSON





Schedule

Byway	Description
Byway 100, Wimbish	From its junction with the southern end of Lower House Farm Lane, in a generally southerly direction for a distance of approximately 550 metres to the north side of the property known as 'Ellis Green Cottage'.
Byway 1, Little Henny/Byway 13, Middleton	From a point approximately 60 metres north east of its junction with the northern end of Lodge Fam Lane, Little Henny in a generally north easterly direction for a distance of approximately 1400 metres to a point approximately 50 metres south west of its junction with the western end of The Street, Middleton.
Byway 61, Willingale (Lucas Lane)	From its junction with Bassetts Lane in a generally north westerly direction for a distance of approximately 920 metres to a point approximately 50 metres south east of its junction with Norton Heath Road.
Byway 3, Pentlow and Hoe Lane	From its junction with Pentlow Lane in a generally southerly direction for a distance of approximately 1025 metres to its junction with School Road.
Byway 24, Broxted/Byway 99, Thaxted/ Byway 22, Tilty (Delfits Lane)	From its junction with B1051 at Suckstead Green in a generally south easterly direction for a distance of approximately 1950 metres to its junction with the public road at Tilty Farm Lane.



**Prohibition of Driving
on Byway 100 Wimbish**

Key

Byway A - B 
Alternative route (see inset) 

Plan No. PROW-18-26
Definitive Map Sheet TL63SW Scale 1:7000
Grid Ref TL 601,349 to 602,343
Length of Byway = 550 metres



Essex County Council

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