

**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:** [REDACTED] [clerk@wimbish.org.uk](mailto:clerk@wimbish.org.uk);  
**Subject:** FW: PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION  
**Sent:** 23/01/2025 12:02:00

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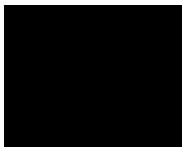
Good afternoon [REDACTED],

I have spoken the applicant's agent who advise that the applicant wishes to proceed with the order.

I have reviewed the proposed partial extinguishment proposal as outlined in the order and the objections raised by the PC against the criteria of the legislation, and can confirm that we will consequently be referring the opposed order to the Planning Inspectorate (PINS) for determination.

If the parish council wish to avoid a public inquiry for the reasons outlined in previous correspondence (costs to public, applicability of order to the s118 criteria) then please let me know within the next two weeks as it is my aim to submit the referral to PINS early next month.

Kind regards



**| Public Path Order and Development Officer**



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**From:** [REDACTED]  
**Sent:** 01 November 2024 10:49  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION

Good morning [REDACTED],

No worries and thank you for the response and reiteration of the PC's position.

I am still waiting for instructions from the applicant/their agent, but will I confirm by email when I know what will happen with this order.

Kind regards

[REDACTED]

[REDACTED] | **Public Path Order and Development Officer**



[REDACTED]

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**From:** [REDACTED]

**Sent:** 31 October 2024 21:28

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** RE: PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION

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Hi [REDACTED],

So sorry for the delay in responding, I thought I had sent you this email after the last meeting, but it was stuck in my draft box.

In respect of the individual points raised I will address these by the numbers you gave them:

1. The law allows for applicants (mostly landowners) to apply to divert or extinguish public right of way for which different tests (criteria) apply. It being a public right of way is not in itself sufficient reason to refuse an

application as the law specifically allows for changes, including extinguishments, to be made. In terms of the footbridge, it should be noted that it is not simply the omission of a footbridge that is preventing the use of the legal alignment of this footpath. Reinstating the footpath would require quite significant clearance through a wooded area, causing damage to any wildlife habitats located there. It would not be prudent for my PROW Maintenance colleagues to install a bridge while the full legal route is not currently obtainable, nor to reinstate the whole route while this application is under consideration.

**Footpath route is cleared, so this isn't an issue.**

2. No alternative route has been suggested as this is not a diversion application. We have merely pointed out that alternative routes exist that perform the same access function thus rendering the relevant section of Footpath 70 as 'not needed' being the test in the legislation. This dualling of access provision was acknowledged by the parish council's response comments at the informal consultation stage; 'Although the alternate route is functionally the same destination.' The routes that render Footpath 70 as not needed are byways, they are not as described by the parish council 'made up roads' nor are they 'metalised roads' as described previously. Sections of them have a hardened surface (and signs saying 'unsuitable for HGVs') with verges to the side and other sections have a natural surface – both with low levels of vehicle use. The impression given by the terms used in the objection is that walking these routes is akin to walking a carriageway road. I do not believe that that is a reasonable comparison nor is it one that I believe would stand up the site visit by a PINS Inspector.

**The road is used by delivery vans, dustbin lorries and other vehicles which has now made it full of potholes and there across a field is better when out on a walk.**

3. The guidance from DEFRA (to order confirming authorities which includes PINS) specifically references and is relevant to 'a garden or curtilage of a residential dwelling.' The legal route of Footpath 70 passes through the gardens of three properties, Midfield, Stocks, and Flora Cottage as well as through two agricultural meadows. All the relevant additional landowners (to the applicant) have consented, acknowledging the impact reinstatement of the legal route would have on their privacy and security or farming activities. This is addressed in the 'Guiding Principles' of the DEFRA document in pages 6 and 7.

Firstly, the applicability of the location is confirmed in Section 7. In consideration of Section 9 the OMA weighed up the impact of the PROW versus the need for the footpath (s118 criteria). Section 10 requires the OMA and PINS to make and respectively confirm an order if the relevant tests (s118) have been met. We are confident that they have. Sections 11 and 12 (a and b) deal with the possibility of a diversion. There is no diversion route available which would address the issues faced by the landowners and any alternative route would simply displace these issues to another part of their land or leave one or more landowners with a disproportionate burden. More pertinently, we do not believe given the relevance to s118 criteria that a diversion is warranted

in this circumstance. Section 12 (d and e) are the sections that the OMA believe apply to this proposal as we believe that the footpath is not needed for public use.

**The PC disagree.**

4. The formal, public consultation, which include notices on site and an advert in a local newspaper as well as on our website ended on 5<sup>th</sup> September. The only objection received was that made by the parish council. It is logical to conclude that if strong opinions were held about this proposal locally that we would have received many other objections to reflect that. The use of the term 'the local residents' by the parish council implies that opinion locally is both consistent and commonly held across Wimbish. I would reiterate that the affected landowners, their friends and neighbours are also residents and that the lack of any objections other than the parish council's does not support this point.

**The PC has had objections from Members of the Public.** [REDACTED]

5. As stated in my response to point 1 the law specifically allows for applications to be made to change PROW (diversions and extinguishments). A position that PROW should not change and should not be extinguished, if that is the point being made, is not a valid one in law and is contrary the relevant legislation. Maintaining such a position could lead to claims of unreasonable behaviour and an award of costs against anyone ignoring the relevance of the tests in the legislation in a setting such as a Public Inquiry.

**The PC have been approached my MOP's and the PC are representing the views of the PC and the members of the public and the PC does not wish to withdraw it's objections.**

Kind regards

[REDACTED]  
Clerk to Wimbish PC

[REDACTED]

---

**From:** [REDACTED]

**Sent:** 11 September 2024 10:27

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** RE: PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION

Good morning [REDACTED]

Thank you for your email outlining the parish council's position and reasons for objection to the order.

The order was made under Section 118 of the Highways Act 1980 wherein the relevant test for if the path should be extinguished is whether it is needed for public use.

It firmly remains the position of the Order Making Authority (OMA i.e. ECC) that the proposed extinguishment does meet this test.

I am waiting to hear from the applicant's agent as to whether they wish to proceed and it may well be that they and their similarly effected neighbours, as parishioners themselves, will wish to engage directly with the Parish Council to gain further insight into the reasons given, many of which I believe do not address the criteria of the legislation, and to have an opportunity as locals to put their own points forward.

Should the applicant wish to proceed we as the OMA will refer the matter to the Secretary of State in the form of the Planning Inspectorate (PINS) for determination by Public Inquiry.

Under the current legislation the costs of that process will be absorbed by the taxpayer.

In the interim I would like to confirm some facts for my records please and to address the points raised by the parish council.

Can you please firstly confirm that the decision to object was the minuted decision of the full parish council?

Objections by individual councillors or a chairperson in lieu of all members would have to be considered a private objection by them.

In respect of the individual points raised I will address these by the numbers you gave them:

1. The law allows for applicants (mostly landowners) to apply to divert or extinguish public right of way for which different tests (criteria) apply. It being a public right of way is not in itself sufficient reason to refuse an application as the law specifically allows for changes, including extinguishments, to be made. In terms of the footbridge, it should be noted that it is not simply the omission of a footbridge that is preventing the use of the legal alignment of this footpath. Reinstating the footpath would require quite significant clearance through a wooded area, causing damage to any wildlife habitats located there. It would not be prudent for my PROW Maintenance colleagues to install a bridge while the full legal route is not currently obtainable, nor to reinstate the whole route while this application is under consideration.
2. No alternative route has been suggested as this is not a diversion application. We have merely pointed out that alternative routes exist that perform the same access function thus rendering the relevant section of Footpath 70 as 'not needed' being the test in the legislation. This dualling of access provision was acknowledged by the parish council's response comments at the informal consultation stage; 'Although the alternate route is functionally the same destination.' The routes that render Footpath 70 as not needed are byways, they are not as described by the parish council 'made up roads' nor are they 'metalised roads' as

described previously. Sections of them have a hardened surface (and signs saying 'unsuitable for HGVs') with verges to the side and other sections have a natural surface – both with low levels of vehicle use. The impression given by the terms used in the objection is that walking these routes is akin to walking a carriageway road. I do not believe that that is a reasonable comparison nor is it one that I believe would stand up the site visit by a PINS Inspector.

3. The guidance from DEFRA (to order confirming authorities which includes PINS) specifically references and is relevant to 'a garden or curtilage of a residential dwelling.' The legal route of Footpath 70 passes through the gardens of three properties, Midfield, Stocks, and Flora Cottage as well as through two agricultural meadows. All the relevant additional landowners (to the applicant) have consented, acknowledging the impact reinstatement of the legal route would have on their privacy and security or farming activities. This is addressed in the 'Guiding Principles' of the DEFRA document in pages 6 and 7.

Firstly, the applicability of the location is confirmed in Section 7. In consideration of Section 9 the OMA weighed up the impact of the PROW versus the need for the footpath (s118 criteria). Section 10 requires the OMA and PINS to make and respectively confirm an order if the relevant tests (s118) have been met. We are confident that they have. Sections 11 and 12 (a and b) deal with the possibility of a diversion. There is no diversion route available which would address the issues faced by the landowners and any alternative route would simply displace these issues to another part of their land or leave one or more landowners with a disproportionate burden. More pertinently, we do not believe given the relevance to s118 criteria that a diversion is warranted in this circumstance. Section 12 (d and e) are the sections that the OMA believe apply to this proposal as we believe that the footpath is not needed for public use.

4. The formal, public consultation, which include notices on site and an advert in a local newspaper as well as on our website ended on 5<sup>th</sup> September. The only objection received was that made by the parish council. It is logical to conclude that if strong opinions were held about this proposal locally that we would have received many other objections to reflect that. The use of the term 'the local residents' by the parish council implies that opinion locally is both consistent and commonly held across Wimbish. I would reiterate that the affected landowners, their friends and neighbours are also residents and that the lack of any objections other than the parish council's does not support this point.
5. As stated in my response to point 1 the law specifically allows for applications to be made to change PROW (diversions and extinguishments). A position that PROW should not change and should not be extinguished, if that is the point being made, is not a valid one in law and is contrary the relevant legislation. Maintaining such a position could lead to claims of unreasonable behaviour and an award of costs against anyone ignoring the relevance of the tests in the legislation in a setting such as a Public Inquiry.

I will wait to hear from you on the points raised above and would welcome the parish council giving consideration to withdrawing their objection.

Kind regards

[REDACTED] | PROW & Records Analyst



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**From:** [REDACTED]  
**Sent:** [REDACTED]  
**To:** [REDACTED]  
**Subject:** RE: PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION

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Dear [REDACTED],

Wimbish Parish Council would like to lodge their objections to the Extinguishment order of Footpath 70 Wimbish for the following reasons:

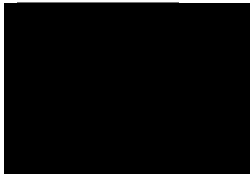
1. Footpath 70 is a 'public right of way' which the Parish Council and local residents use and enjoy. It would have been used more regularly if the bridge had been replaced by the ECC PROW team. It has been reported a number of times by the PC and residents.
2. The alternative route that has been suggested is a narrow single track made up road used by numerous delivery drivers and other vehicles as a short cut.
3. The path is not close to any houses, but that isn't an acceptable reason for closing the path.
4. 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.

5. It is very important to protect and maintain our Public Rights of Ways.

Please acknowledge receipt of this objection.

Kind regards



Clerk to Wimbish PC

---

**From:** [Redacted]  
**Sent:** 08 August 2024 09:15  
**Subject:** PUBLIC PATH EXTINGUISHMENT ORDER FOOTPATH 70 WIMBISHS, DISTRICT OF UTTLESFORD MADE ORDER CONSULTATION

Dear Sir/Madam,

Highways Act 1980 Section 118

Essex County Council has Made an Order to extinguish a part length of Footpath 70 in the parish of Wimbish in the District of Uttlesford.

It is proposed to extinguish a section of Footpath 70 in the parish of Wimbish in the District of Uttlesford as per the attached order and plan as it is considered expedient that the path or way should be stopped up on the ground that it is not needed for public use.

The section of footpath proposed to be extinguished runs through an overgrown wooded area within an area of common land, through several property gardens (see attached DEFRA presumptions guidance) and across a field.

The common land and any associated rights are not affected by this order, which solely concerns the footpath.

Reinstating the footpath through the wooded common land section would require the clearance of a path through trees and vegetation and the consequent impact upon any wildlife habitats present therein. Byways 98 and 100 provide equivalent access to Footpath 70, and sufficient length of the Footpath has been retained in the order to ensure that the connection between the aforementioned byways and Footpath 67 are maintained, preserving east-west connectivity and enabling the creation of circular routes.

Attached is a copy of the Made order and the Notice which will be posted on site and appear in the Saffron Walden Reporter on Thursday 8 August 2024.

You have already been informed of this proposal, but if you have any further comments to make, please do so by 5 September 2024.

Kind regards

[REDACTED] | PROW & Records Analyst



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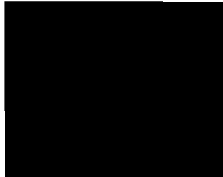
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had been replaced by the ECC PROW team. It has been reported a number of times by the PC and residents.

2. 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.
3. The path is not close to any houses, but that isn't an acceptable reason for closing the path.
4. 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.
5. It is very important to protect and maintain our Public Rights of Ways.

Please acknowledge receipt of this objection.

Kind regards



Clerk to Wimbish PC

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 | **PROW & Records Analyst**



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