

RIGHTS OF WAY COMMITTEE

9 January 2018

PUBLIC RIGHTS OF WAY

PROPOSED STOPPING UP OF PUBLIC FOOTPATH No 120 (FORMER WANSBECK DISTRICT)

Report of the Executive Director of Local Services
Cabinet Member: Councillor Glen Sanderson, Environment and Local Services

Purpose of report

In this report, the Committee is asked to consider proposals to extinguish alleged Public Footpath No 120 (Former Wansbeck District) at Cambois.

Recommendations

It is recommended that the Committee agree that:

- (i) public footpath rights be extinguished over the route W-J, by means of an order made under the Town & Country Planning Act 1990, to allow development to take place, in line with planning permission already granted;**
- (ii) public footpath rights be extinguished over the route J-F, by means of an order made under the Highways Act 1980, on the grounds that (if the W-J section is stopped up) it is no longer needed for public use.**

1.0 BACKGROUND

- 1.1 In October 2017 the County Council made Definitive Map Modification Order (No 15) 2017. This Order sought to record two public footpaths (Footpaths Nos 118 and 120) over land associated with the former Blyth Power Station site at Cambois. Footpath No 118 proceeds from East Sleekburn, in a general south-easterly then north-easterly direction along the north bank of the Sleek Burn and then River Blyth. Footpath No 120 proceeds from the C415 road at Cambois, in a general south-westerly direction passing the former ash dock, then following the north bank of the River Blyth for a short distance. Between the section of palisade fence at eastern end of Footpath No 118 and the section of palisade fence at the western end of Footpath No 120 there is a 240 metre long gap - over which public footpath rights were considered NOT to have been reasonably alleged to exist (and hence this section was not included in Definitive Map Modification Order (No 15) 2017. At the time of

writing, this Order has attracted no objections though it is anticipated that ARCH will be objecting to the Footpath No 120 part of the Order. If there are no objections to the Footpath No 118 element, it may be possible for the Council to sever the Order and confirm (i.e. bring into effect) that part as unopposed.

- 1.2 ARCH has formally requested that the public right of way W-J be extinguished on the grounds that this is necessary in order to permit the site to be developed in line with planning permission that has already been granted.
- 1.3 If the proposal to close the W-J section of path is approved, officers would recommend consideration being given to making a further Order to stop up the J-F section of path too, on the grounds that this very short section of path would be entirely isolated (i.e. unconnected to any public highways) and therefore unusable. There is case law (*Kotegaonkar v SoS* (2012)) that indicates that, even if the short J-F section was not formally extinguished, the public rights over it would automatically be lost anyway (because it is not possible to have an entirely isolated public right of way).
- 1.4 The Parish Council, path user groups and path users were consulted regarding these proposals in November 2017.

(i) By email, on 2 November 2017, Mrs S Rogers responded to the consultation, on behalf of the British Horse Society, stating:

“The BHS has no problems with the stopping up of this footpath.”

(ii) By email, on 20 November 2017, Ms D O'Connor of Cambois responded to the consultation, stating:

“I would like to raise my objections to the proposed footpath being closed that has been requested by Arch.

The path in question is subject to a R.O.W. order being agreed by NCC and is due to be finalized in December.

It has been proved that this path has been used by the public for over 20 years and the Estuary area is protected by DEFRA as a SSSI site. If Arch are allowed to close this path and then develop the area it would be extremely harmful to the wildlife that over-winter and roost here throughout the year.

Arch showed on their original plan that a roadway could be constructed around the existing dock and transport could access Battleship wharf without the need to alter this area of land.

myself and other have walked this route for years and although it was left by RWE in a deplorable condition nature is taking it back and the flora and fauna are starting to flourish.

there is a lot of development in this area and it would be a tragedy if we were to lose this peaceful, beautiful area on the river.”

(iii) By email, on 20 November 2017, Mr D Blake of Cambois responded to the consultation, stating:

“In reply to the request by “Arch” to close off the footpath adjoining the old ash dock I most certainly strongly post an objection to the closure unless a satisfactory replacement path be substituted in this area as it is the only access the village has to the estuary. I have used this path

since the 1950's when the original path was closed to make way for the ash dock and since the 1960's at least twice a day to walk my dogs and photograph the flora and fauna, wildlife and birds of the foreshore.

There is no one in the village opposed to any progress on the old power station site which can only be a major step forward but not at the cost of facilities we have enjoyed all our lives as at the moment the road when entering the village down the main road is like entering a prison site.

When we suggested an alternative path be created with "Arch" they gave an aggressive and emphatic no when I asked the question would this proposal to close the path and take away the access I had been privileged to use all for my 76 years the arch " representative just smiled and said in your case yes. With a development on this scale I refuse to believe an alternative path cannot be accommodated to satisfy both parties somewhere on this site. Also this tiny site has an abundance of wild life of which I include species that I have personally photographed over the last few years. Roe Deer, Fox, Rabbit, Otter, Hedgehog, Stoat, Weasel, Carrion Crow, Rook, Jackdaw, Magpie, Kestrel, Sparrow Hawk, Woodcock, Pheasant, Grey Partridge, Wood Pigeon, Collar Dove, Lapwing, Blackbird, Song Thrush, Mistle Thrush, Fieldfare, Redwing, Meadow Pipit, Tree Pipit, Dunnock, Skylark, Blackcap, Yellowhammer, Reed Bunting, Linnet, Stonechat, Whitethroat, Marsh Warbler, Pied Wagtail, Grey Wagtail, Goldfinch, Goldcrest, Blue Tit, Great Tit, Coal Tit, Long Tail Tit, Snipe, Kingfisher, Knot, Sanderling, Dunlin, Ring Plover, Redshank, Turnstone, Stint, Greenshank, Bartail Godwit, Curlew, Herring Gull, Lesser Blackback Gull. Common Gull, Common Tern, Little Egret, Heron, Mallard Duck, Teal Duck, Widgeon, Scaup, Tufted duck, Shellduck, Eider Duck, Mute Swan, Red Breasted Merganser, Coot, Moorhen, Dabchick, Canada Goose, Greylag Goose, Cormorant, Common Frog, Toad, Lizard, Common Newt, and various Dragon flies, Common Blue Butterfly , Blue Fritillary, Woodland Brown, Speckled Brown, Grayling (largest colony in the north east), Tortoiseshell, Red Admiral, Peacock, all butterflies, Marsh Orchid, Spotted Orchid, Bee Orchid. I am sure to have missed a few off this list but I am sure you will agree why this footpath is so important in my life."

(iv) By email, on 20 November 2017, Mr G Cowen responded to the consultation, stating:

"I am contacting you to raise objection to the proposed closure of a footpath that in fact has recently been given approval. The said footpath runs alongside the old ash dock and is the only access to the river Blyth estuary from Cambois."

(v) By email, on 30 November 2017, Mr & Ms Jones of Cambois responded to the consultation, stating:

"We would like to add our support for keeping open the footpath at the Ash Dock in Cambois along the river Blyth estuary to East Sleekburn."

(vi) By email, on 3 December 2017, Ms C Watts of Cambois responded to the consultation, stating:

"I would like to politely raise my objection to the closure of the Cambois estuary path."

As a resident of Cambois for nearly 11 years the thought of this area being taken away saddens me greatly.

It is a beautiful untouched place where I can walk in total peace, observing the vast breathtaking nature and changing of the seasons. I suffer from severe mental illness and struggle to leave my home for weeks at a time.

This part of my village is a quiet salvation which I so appreciate on my more well days and with severe anxiety that comes with my ultra rapid cycling bipolar it would leave me nowhere peaceful to go as the beach has gotten more and more busy as the years have gone on.

This walk gives me the sense of escape whilst not going far from home. I can not understand the logic behind this proposal and hope that the contact from many other fond lovers of this very special part of our forgotten village will result in us and future generations being able to enjoy it for years to come.

Nature is the world's gift, it cost's nothing to observe it. In a world of growing industry, roads and houses being built on precious land it would be a travesty for people not to access this untouched beauty.

I hope my email will be taken into consideration as an objection."

(vii) By email, on 3 December 2017, Mr & Ms McLeod responded to the consultation, stating:

"We would like to object to the closing of the footpaths Cambois is a lovely village but been spoilt . We are the village that has been forgot about no gas in the village at this day and age and the road into Cambois is disgusting it would be nice to save our public footpaths for us to enjoy."

(viii) By letter, dated 3 December 2017, Mr J James of Cambois responded to the consultation, stating:

"I am writing to you to register my objection to the wansbeck Footpath No 120. This footpath has been in use for all of my life and I am now 83 years of age. We have had access to these mud flats since I was a boy. We have just had notice that this a public right of way. As a keen photographer, I believe that we have the right to these mud flats."

(ix) By email, on 7 December 2017, Mrs HM Dobson responded to the consultation, stating:

"I am emailing to register in the strongest possible terms my objections to the proposed closure of footpath number 120, by ' ARCH' . This may be an unknown path in an area unheard of by many but it is a well used footpath and access track for many more, and has been for many years. It adjoins an SSSI which is an area of importance for native flora and fauna, insects, birds and mammals.

These may be small considerations in the grand money-making schemes of ARCH, but are real and valid reasons for this application for closure to be refused.

Please use any influence you have, listen to these and other objections and get this application rejected."

2. DISCUSSION

- 2.1 The British Horse Society response is not unexpected. The right of way in question is a short public footpath, of no utility to horse riders.
- 2.2 There were, however, 8 letters / emails (from 10 people) opposing the closure of Footpath No 120. Some of these were from people who previously provided user evidence in support of public footpath rights and / or people who have identified themselves as path users. Other objections are from people who haven't specifically identified themselves as path users who may be opposing the loss of a resource that they know other people are benefiting from.
- 2.3 At its meeting in July 2017, the Rights of Way Committee resolved that public footpath rights over the route of Footpath No 120 were reasonably alleged to exist. This is the relatively low threshold test that needs to be applied when considering whether or not a route should be included in a future Definitive Map Modification Order. The route might not satisfy the higher 'balance of probabilities' test necessary to justify confirmation (i.e. bringing into effect). This 'balance of probabilities' test needs to be applied by the County Council in situations where no objections or representations are received, and would also be applied by an Inspector appointed by the Secretary of State in situations where objections to the Order are received.
- 2.4 ARCH's development proposals already have planning permission, so it would not be appropriate to re-argue these, or their potential impacts on flora and fauna; these are all planning considerations. The Committee must limit its consideration to the matter of the potential footpath closure.
- 2.5 ARCH has argued that it is not possible to accommodate Footpath No 120 (either on its existing alignment or on an alternative alignment) within their development site. The ash dock site will be redeveloped as an operational dock and the former power station site will host new commercial / manufacturing units. In the future, there will be regular vehicular movements between the dock and the manufacturing / commercial units, and access between the two will be required at all times. From an operational point of view, and for overall site security, they do not consider it to be feasible for a public footpath to be retained across the site.
- 2.6 Although, at the time of writing, ARCH has not formally objected to Definitive Map Modification Order (No 15) 2017 the closing date for objections is not until 21 December 2017. It is understood that ARCH is intending to object to the Footpath No 120 part of the Order (but not the Footpath No 118 element) on the basis that, on a balance of probabilities, it has not been shown to be a public right of way. ARCH are seeking to close Footpath No 120 now, whilst it is still only an alleged public footpath, because they are under strict time constraints regarding development of the site. If Footpath No 120 was, ultimately, determined not to be a public footpath, then no stopping-up would be necessary, but it would take a minimum of 12 months to obtain such a determination. If, however, in 12-18 months time, public footpath rights were found to exist, and a stopping up order was then made for Public Footpath No 120, this would mean work on site being delayed by an additional 12 - 18 months.

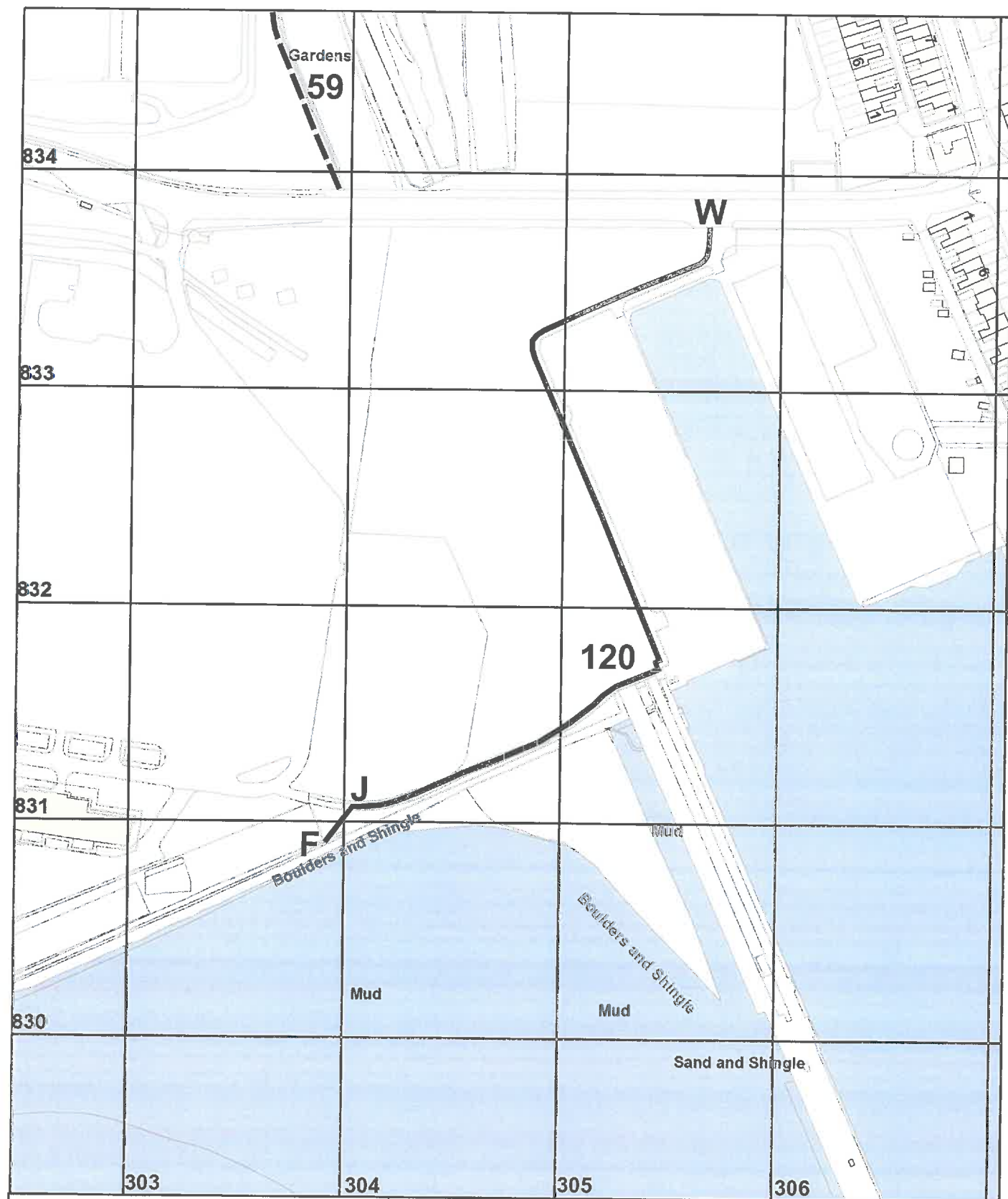
120, this would mean work on site being delayed by an additional 12 - 18 months.

- 2.7 If no objections to the Footpath No 118 part of the Order are received, it may be that Footpath No 118 will be legally recorded as a public right of way in early 2018. Footpath No 118 permits the public excellent access to the River Blyth estuary. Unfortunately, since access to this path can only be gained from the East Sleekburn end, this route will be less beneficial to the people living in Cambois.
- 2.8 The 460 metre long cul-de-sac Footpath No 120 appears to regularly used, and much valued, by a small core of Cambois residents. The applicant has argued that the W-J section of Footpath No 120 needs to be stopped up in order for development of the dock area / former power station site, in line with planning permission that has already been granted. Whilst the County Council would generally hope that a developer would provide an alternative route that an affected public right of way could be diverted onto, the applicant has argued that in this instance, for operational and security reasons, there is no suitable alternative route.
- 2.9 Balancing the disadvantages the loss of this public footpath would bring against the advantages of the development taking place (which the applicant insists could not take place if the path remained), officers consider that it would be appropriate to make an order under section 257 of the Town & Country Planning Act 1990 to stop up the 440 metre long W-J section of footpath. If the W-J section is being stopped up, it would also be appropriate to stop-up the 20 metre long J-F section (this time under section 118 of the Highways Act 1980) at the same time, on the grounds that this would not be needed for public use. ARCH will be meeting the cost of making the W-J section stopping up order. Should that order attract objections, and be submitted to the Secretary of State for determination, it would be left to the developer to make the case in support of confirmation of the order.

BACKGROUND PAPERS

Local Services Group File: F/120x

Report Author Alex Bell – Definitive Map Officer
(01670) 624133
Alex.Bell@Northumberland.gov.uk



Northumberland

Northumberland County Council

Infrastructure

Local Services Group

County Hall Morpeth Northumberland

Telephone 0845 600 6400 NE61 2EF

Public Rights of Way

Existing Public Footpath

—————

Alleged Public Footpath to be closed

This map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the Controller of H.M.S.O. Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. Northumberland County Council O.S. Licence No.100049048 (2016)

Former District(s)

Wansbeck

Parish(es)

N/A

Scale

1:2500

Def. Map No.

160

O.S. Map

NZ 38 SW

Date

October 2017