

PLANNING COMMITTEE

DATE	23rd April 2025
REPORT OF	Carolina Borgstrom, Director for Economy, Environment and Infrastructure
SUBJECT	Extinguishment of part of Public Footpath 67, Waltham
STATUS	Open

CONTRIBUTION TO OUR AIM

The maintenance and review of the Definitive Map and Statement is identified as a key action in the Council's Rights of Way Improvement Plan (ROWIP) 2021.

The proposal will contribute to the Council's Stronger Economy objective by recording a path on the Definitive Map and will not be deleted in the future.

The ROWIP is identified as a key policy document within the Council's Local Transport Plan, which seeks to provide an opportunity for healthy lifestyle choices and supports the Council's strategic aims to Improve Health & Wellbeing within the Borough.

EXECUTIVE SUMMARY

This report recommends the making of an Order to extinguish part of Waltham Public Footpath 67 as shown in Appendix 1.

The path is shown running from Church Lane to Waltham allotments on Ings Lane, and is identified as running through the property of 19 Church Lane, and the curtilage of Ashlea Court Care Home. The path has never been laid out on the ground. The short section of path proposed to be extinguished is unwalkable.

The Council has a duty to make an Order under section 53(2)(b) of the Wildlife and Countryside Act 1981, as the authority has a duty to keep the Definitive Map under continuous review and as evidence has been discovered that a public right of way over land shown on the map and statement as a highway requires modification.

RECOMMENDATIONS

That an extinguishment order be made under the Highways Act 1980 Section 118 and Wildlife and Countryside Act 53A(2) to remove the Public Footpath shown on the Definitive Map between Church Lane and Waltham Allotments.

- a. To approve the making of an Order in accordance with Highways Act 1980 Section 118 and Wildlife and Countryside Act 53A(2).
- b. To confirm the deletion Order as made, subject to there being no objections or in the event of objections which cannot be resolved and withdrawn, for the Order to be referred to the Planning Inspectorate for determination.

REASONS FOR DECISION

The Public Footpath is shown on the legal record for Public Rights of Way (the

Definitive Map). As such a legal order is required to delete it from the Definitive Map and Statement. As the path has never been set out on the ground and some of the line has either been built across or has been included in residential curtilages, it is appropriate to delete the path from the legal record.

It is the opinion of officers that it is appropriate to delete the path as it has never been laid out on the ground.

1. BACKGROUND AND ISSUES

- 1.1 The case has previously been to the Planning Committee. It was deferred until the Definitive Map Modification Order (DMMO) had been processed to create a Footpath from Church Lane to the allotments. An application was received from the landowner of 19 Church Lane on 6th December 2018 to extinguish the Public Footpath.
- 1.2 The DMMO Order has now been confirmed and there is now a Public Footpath running between Church Lane and the allotments along the access road to Ashlea Care Home.
- 1.3 This extinguishment came about regarding a planning application to erect a single detached garage to the rear of the garden of 19 Church Lane, Waltham. During the consultation process, Public Footpath 67 was identified as running through the curtilage of the property and affecting the planning application. This garage has now been built across the line of the Public Footpath.
- 1.4 The Definitive Map and Statement currently records the Public Footpath running between the garden of 19 Church Lane, Waltham and Public Footpath 66 which runs through Waltham allotments. The line of the Public Footpath is recorded running over a ditch. There has never been a bridge or culvert recorded at this location making the path useable.
- 1.5 On closer inspection of documents, including aerial photographs and historic Ordnance Survey maps, the path did not appear to exist. There is no evidence of the path on the ground.
- 1.6 The Public Rights of Way Parish notes were inspected, and a file note mentioned the following which is dated 2nd May 1977:
- 1.7 *"It is now obvious that this path was shown in the wrong position on both the draft and provisional maps by the former Lindsey County Council and because of this perpetuated on the Definitive Map. Part 1 of Schedule 3 of the Countryside Act enables mistakes which have been made in the preparation of the definitive map to be corrected on a review of the map and the map will be corrected therefore when the next review map is published"*.
- 1.8 Apart from this note there, is no further mention in the Public Rights of Way Parish Notes of a Public Footpath running from Church Lane to the allotments at this location. All further notes in relation to the Public Footpath

relates to the path running from Church Lane to the Allotments along the access road to Ashlea Care Home. This path has been waymarked by Humberside County Council from Church Lane with the directional arrow pointing along the Ashlea Care Home access road and this path is now Public Footpath 78.

- 1.9 A pre-Order making consultation was carried out on 7th January 2025 with Ward Councillors, Waltham Parish Council, adjoining landowners and user groups including the Ramblers Association. No objections were received, Waltham Parish Council said they support the extinguishment of the path.
- 1.10 A plan highlighting the part of Footpath 67 identified for extinguishment is shown in Appendix 1.
- 1.11 The path is to be deleted from the Definitive Map and Statement as evidence shows that it was recorded in error.
- 1.12 The Parish Council also raised that they were not content extinguishing the path if there was no access from Church Lane to the Allotments.
- 1.13 A Definitive Map Modification Order was researched and has now been confirmed for a Public Footpath to run from Church Lane to the Allotments. This runs along the access road to Ashlea Care Home. It is believed that this is the correct alignment of the Public Footpath and not the location of the Public Footpath that this report is making recommendation to extinguish.
- 1.14 The extinguishment part of the Public Footpath is on the anomaly list detailed in the Rights of Way Improvement Plan 2021-2031. One of the objectives of the Rights of Way Improvement Plan is resolve anomalies R1A/c. Extinguishing this path will remove this anomaly.

2. RISKS AND OPPORTUNITIES

- 2.1 There is a risk that there could be objections from members of the public or stakeholder groups to the proposed Public Path deletion Order. However, pre-Order consultations have been carried out and no objections have been received.
- 2.2 Failing to delete the path will impact on the owners of 19 Church Lane and Ashlea Care Home for having a Public Footpath shown running through their property and will be shown on any future sale of the properties.

3. OTHER OPTIONS CONSIDERED

- 3.1 The Council could choose to do nothing and not implement the deletion Order. The risks include that the Council has a duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly. Evidence has been found that there is an error in the Definitive Map which ought to be investigated it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue this duty in this case it is liable to complaints being submitted

through the Council's complaints procedure, potentially leading to a complaint to the Ombudsman. Ultimately a request for judicial review could be made.

4. REPUTATION AND COMMUNICATIONS CONSIDERATIONS

- 4.1 The Council has a duty to keep the definitive map and statement under continual review and therefore there is no risk associated with the Council pursuing this duty correctly. Now evidence has been found that there is an error in the Definitive Map which ought to be investigated it would be unreasonable for the Council not to seek to address this fact. If the Council fails to pursue this duty in this case it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to a complaint to the Ombudsman. Ultimately a request for judicial review could be made.

5. FINANCIAL CONSIDERATIONS

- 5.1 If there are objections to the Order and the case goes to the Planning Inspectorate, they may decide that the route may need to be opened on the ground. If this is the Planning Inspectorate's decision, there may be a further cost to the Council in having to open the path.

6. CHILDREN AND YOUNG PEOPLE IMPLICATIONS

- 6.1 There are no children and young people implications.

7. CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

- 7.1 There are no climate change or environmental implications.

8. FINANCIAL IMPLICATIONS

- 8.1 If there are objections to the Order and the case goes to the Planning Inspectorate, they may decide that the route may need to be opened on the ground. If this is the Planning Inspectorate's decision, there may be a further cost to the Council in having to open the path.
- 8.2 There will be further legal and publicity costs in making the necessary extinguishment order to delete the route. These costs are included within the Regeneration Partnership contract and as such will result in no additional costs to the Council. There is no call on revenue or capital reserves.
- 8.3 The extinguishment does not interact with other policies.

9. LEGAL IMPLICATIONS

- 9.1 The relevant tests are laid out in the main body of the report.

10. HUMAN RESOURCES IMPLICATIONS

- 10.1 There are no Human Resource implications.

11. WARD IMPLICATIONS

11.1 This path lies within the Waltham Ward.

12. BACKGROUND PAPERS

12.1 Public Path Order 22 FP67 Waltham case file and Planning Committee report dated 17th July 2019.

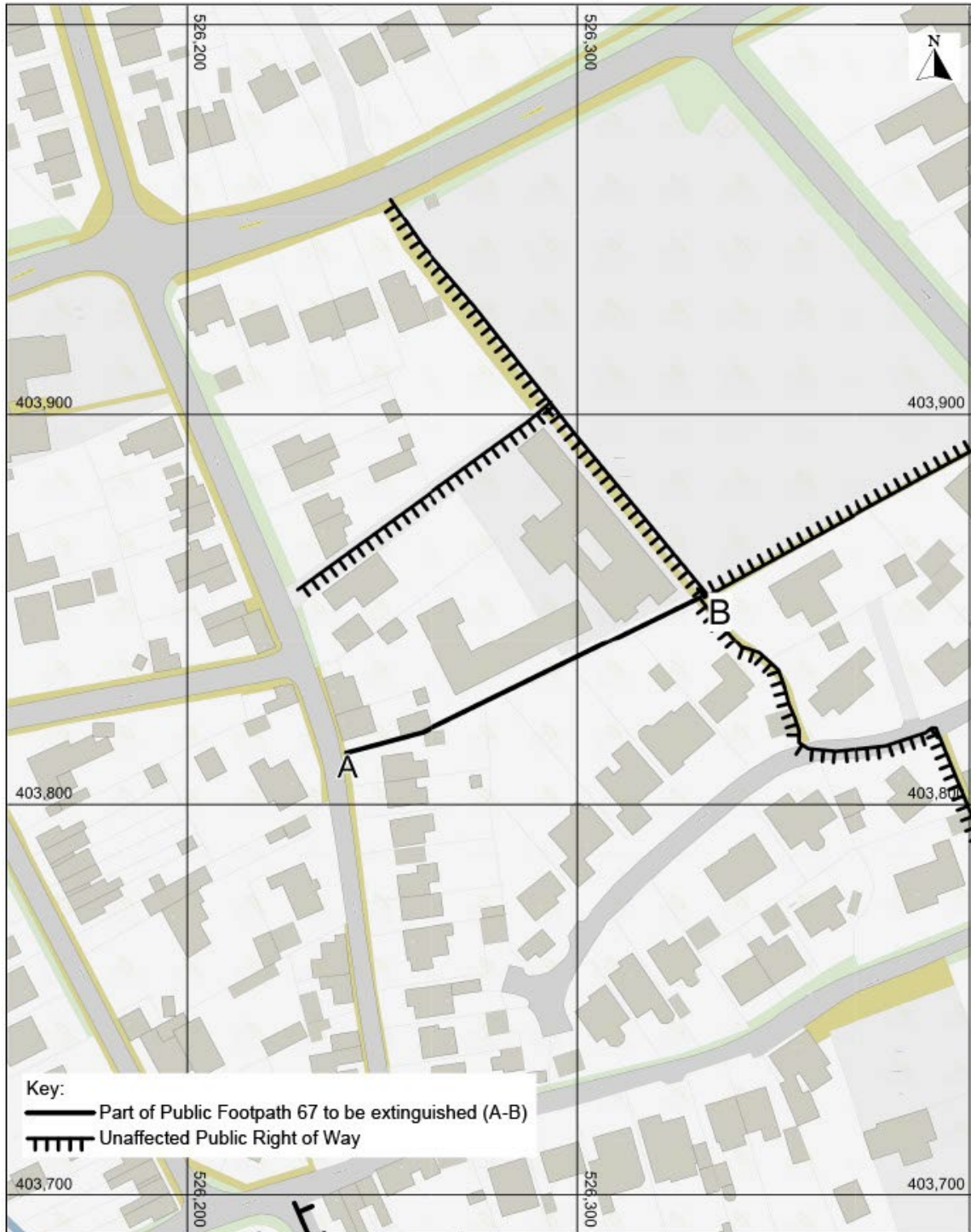
13. CONTACT OFFICER(S)

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Carolina Borgstrom
Director of Economy, Environment and Infrastructure

Appendix 1.
Plan of part extinguishment of Public Footpath 67, Waltham

Extinguishment of part of Public Footpath 67, Waltham



0 25
metres
Scale 1:1,250

Details:

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