

Dudley Borough Local Access Forum

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Rights of Way Orders – Treherns Farm.

Formal Advice of Dudley Borough Local Access Forum (DBLAF) to Dudley Metropolitan Borough Council

DBLAF at their meeting on the 23rd February 2008 resolved:

- 1. That the final draft of the Rights of Way Orders relating to Treherns Farm be circulated to all Forum members as quickly as possible, for their consideration and comments.*
- 2. That, upon receipt of the documents, members feed their comments back to a Sub-Committee of the Forum, consisting of Mr Antill, Mr Woodruff and Mr Davies, in order that a final response can be collated by the Sub-Committee and returned to Mr Jacobs within 14 days of the draft Orders originally being circulated.*

Meeting of Sub-Committee

In pursuance of the resolutions of the Forum, a sub-committee consisting of Trevor Antill, Dave Woodruff and David Davies met at the Somers Social Club, Halesowen, on the 1st February 2008. Mick Freer was invited and attended.

After discussion the following **recommendations** are made to Dudley Metropolitan Borough Council regarding the draft orders and associated matters:

1. The Forum advise that the ‘stopping up’ and ‘diversion’ Orders should more appropriately be made under the Highways Act 1980 s119 (in the interests of the occupier/public) instead of the Town & Country Planning Act 1990 s257. The Planning Act should only be applied when the Orders, in a particular and specifically prescribed manner, are absolutely necessary to enable approved development to take place. In this instance the Forum considers that since the footpaths are within the area of the proposed sports pitches then diversion/extinguishment is not ‘necessary’ under the terms of the Planning Act as there is some flexibility in respect of the alignment of the paths with development still being feasible.
2. The applicant accepted, when they made a presentation to the Forum, that footpaths S73 and S75 were obstructed and had been over a number of years. These paths should be reinstated before the Orders are pursued further. An appropriate officer for Dudley Council should formally confirm that the paths are reinstated and are in an appropriate condition, including waymarking, for the public to use. These paths should be available for the public to use before the orders are published to enable the public to make a meaningful comparison as to convenience and enjoyment between existing and proposed paths. Naturally they should remain in use until such time as the Orders are confirmed and the new paths are created and are fit for use. (The waymarking is necessary, particularly bearing in mind that the paths have been unlawfully obstructed for many years)
3. a). Paragraph 2 of the draft Stopping Up Order makes no mention of the need for the Council to ‘**Certify**’ that the appropriate works, waymarking etc., have been carried out and that the new paths are fit for use. Certification must take place after confirmation and before the diversion/extinguishment becomes operative. (See paragraph 7.2.7 – Coming into Operation – ‘*Rights of Way A Guide to Law and Practice. 4th Edn*’).
- b). No mention is made of the width of the existing paths in the stopping up or the diversion order schedules. These should be included and the paths reinstated at that width or more. (See Planning Inspectorate Advice Note 16) NB. *PINS Advice Note 16 should be read closely since this is much more than a simple ‘Advice’ document. Further, should the existing width (as is, or as in the Definitive Statement) be greater than that stated for the ‘new’ path then two paths would/could ultimately exist!*
4. During consultation with the Forum, Roger Johnson, for the Feoffees, in defence of the definitive rights of way being obstructed and their use

prevented, confirmed that the farm tracks around the site had been used by the general public, without challenge, for decades. When Forum members visited the site they saw evidence of this and noted a lack of signs and obstructions to restrict access. In all reality the public have used these paths without challenge, hindrance or restriction for more than 20 years. The situation needs to be formalised by way of creation orders and the Forum advises that this should be dealt with **concurrently** with the orders herein under discussion. By so doing, there will be some compensation for the loss of amenity value brought about by the urban nature of the development. This relates to the farm tracks seen ‘on site’ including the one through the farmyard exiting onto Worcester Lane.

5. As the diversion relates to significant topographical changes that will affect the enjoyment of that change, the local authority should ensure that the Order is accompanied by graphics to make interested parties aware of the true nature of the diversion subsequent to development. Without such information third parties ability to make a meaningful comparison between ‘old’ and ‘new’ within an informed judgement will be prejudiced.
6. It may be that some of the tracks should be created as bridleways if evidence is available. They appear to lend themselves to this use. Should this be deemed necessary/desirable and in the public interest then this Forum would recommend that this is carried out as a separate exercise **after** all the **footpath orders** have been confirmed, certified and the Definitive Map modified by LEMO.
7. We note a number of typographical errors in the Orders, which are not enumerated here.

The Forum wishes to be kept fully informed regarding this matter including being given an opportunity to make representations in respect of the finalised Orders.

Copies: Cllrs & Hagley Parish Council