

Town Clerk | Swaffham Town Council

From: Town Clerk | Swaffham Town Council
Sent: 03 July 2019 16:42
To: 'David Ormerod'
Cc: Jill Skinner; Les Scott; Oona Kelly; Keith Sandle; david.wickerson@breckland.gov.uk
Subject: RE: Obstruction of the Path and Right of Way from Shepherd's Fold in Heathlands by Breckland District Council

Dear David,

I am somewhat confused by your latest e-mail, which I will include as an agenda item for the Council meeting next Wednesday 10th July, with your e-mail of 28th May, containing a letter to Cllr Mark Robinson at Breckland Council. I did not realise that beyond two letters was a further segment to your e-mail where you had raised other issues. I have not received a letter from you dated the 16th June. I am certainly not withholding matters important to the residents of Heathlands from the Council. The Town Council received a report from Breckland and County Councillor Ed Colman at their last meeting.

I think it would be good for you and the Town Council if I clarify your remit as a volunteer and where you receive your instructions from. You are writing letters as 'Rights of way Officer for Swaffham' which are not sanctioned by the Town Hall Offices or indeed Councillors. So we need to have the boundary lines of communication and actions clearly defined, with a reporting structure, to protect both you and the Town Council. I do apologise because to a certain extent you have been left to your own devices, I will therefore discuss matters with the Council and establish how they wish to operate moving forward.

I will also give you a full response relating to the footpath in question and other issues that you have raised, but not until after the Council meeting on 10th July.

Best regards,

Richard Bishop
Town Clerk



Swaffham Town Council, Town Hall, 4 London Street, Swaffham, Norfolk, PE37 7DQ
 Tel **01760 722922** Fax **01760 720469** www.swaffhamtowncouncil.gov.uk



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From: David Ormerod <ldormerod@gmail.com>
Sent: 02 July 2019 14:52
To: Town Clerk | Swaffham Town Council <townclerk@swaffhamtowncouncil.gov.uk>
Cc: Jill Skinner <jill.skinner@me.com>; Les Scott <lesbscott@yahoo.co.uk>; Oona Kelly <oonaKelly01@gmail.com>; Keith Sandle <keith@keithsandle.com>; david.wickerson@breckland.gov.uk
Subject: Obstruction of the Path and Right of Way from Shepherd's Fold in Heathlands by Breckland District Council

Dear Richard,

On June 16th, 2019, I wrote a detailed letter to you on behalf of the Swaffham Town Council. This letter included a letter I had written to Councillor Mark Robinson of the Breckland Council Cabinet, the officer in charge of the Breckland Council contribution to this problem, and also an insightful letter from Mr. Ian Mitchell of the Norfolk Ramblers. In this letter, I discussed the several issues involved.

I have received no reply from you. At the same time, I understand that my letter to the Council has not been brought before the Council. I do not believe that you should be withholding matters important to the residents of Heathlands from the Council.

I was informed yesterday by the Mayor that on her inquiry of you about this issue, that you had told her that it was the farmer who had blocked off this Footpath. This seems contrary to the facts. The permanent fencing is placed internally to the hedgerow on land (apparently) owned by Breckland Council. Mrs Oona Kelly (whose e-mail is included above), and others, witnessed the Breckland Council workers erecting the fence and installing the metal sheeting across the gap in the fence; they advised her that a more permanent arrangement would follow. The attached pdf shows the footpath that has been extinguished to the east of the obstruction as it runs alongside the farmer's field, and you will see that this is not an informal path, but one with fixed fences and evidence of considerable usage. Am I to understand that you have actually reviewed the situation on site? Perhaps you can advise who has been the source of your suggestion that it was the farmer who blocked off the footpath?

The conclusion of what I heard yesterday was that you believed it was others' responsibility. This is not true. The obstruction is on a town estate across a well-used (public) footpath that has been extinguished by your District Council.

As I understand it, Shepherd's Fold was put aside for public use in the original planning process, and that the footpath beyond to Dulgate Lane was set out at the same time, and has been used continuously since. Have you inquired what precisely was set out in that Planning process?

It is a simple matter in this case to determine responsibility. Breckland Council has undertaken to protect the space as part of your Neighbourhood Plan. The obstruction was undertaken in a high-handed fashion by an external authority without informing the Town Council, and in an attempt to control a public space set out by the formal planning process, apparently for the exclusive economic benefit of Breckland Council. This requires a response from Council. The alternative is to obligate volunteers in the town to collect a large number of detailed signed usage documents to oppose this action, when the action of Breckland Council is probably illegal and ought to be solvable informally at a high official level council-to-council.

This obstruction ought to have been removed immediately it was discovered, but 6-7 weeks later, I understand it is still there, blocking the utility of this footpath for Heathland residents and others. The issues are crystal clear.

A communication has occurred with Mr. Tim Sherwood who has promised to endeavour to get the release of certification from Breckland Council to help establish the public Right of Way on the Definitive Map and Statements.

The even more important issue, however, is how Breckland Council have used their Planning Procedures to assume the ownership of parts of the town of Swaffham (and presumably elsewhere) by what seems to be sleight of hand. If the Council was unaware of this process then it really is unethical. One must presume that Breckland Council did not purchase the two parcels of land in Heathlands as part of the old planning process, but designed an agreement that was mutually satisfactory between Breckland and the landowner. If that is so, then the retention of land within Swaffham has all the features of a bribe, as some consideration has been given that is not to the benefit of Swaffham. The most likely reason to corral Shepherd's Fold within permanent fencing is to develop it. I see no evidence that Swaffham Council has been consulted. Shouldn't this be a matter for the Town Council?

Yours Sincerely,

David Ormerod
7 Mill Lane, Swaffham PE37 7EU

Town Clerk | Swaffham Town Council

From: David Ormerod <ldormerod@gmail.com>
Sent: 28 May 2019 18:03
To: Town Clerk | Swaffham Town Council
Cc: Jill Skinner; Les Scott
Subject: Unilateral extinguishment of valuable footpath in Highlands by Breckland District Council
Attachments: Fence Blocking off the FP exit from Shepherd's Fold through the Hedgerow, The metal grill was used by Breckland to block the gap..pdf; The FP around the field-beyond the hedgerow.pdf; The FP is between the fence and the wood. Dulgate Lane is at the bottom, over the hedge..pdf; Looking north on the FP back towards Shepherd's Fold.pdf; The entrance onto the FP from Dulgate Lane.pdf

Dear Mr Bishop,

I recently was requested to take a look at a well-used pathway in Highlands that had been unilaterally closed off by Breckland Council. The FP starts in a small green space at the end of the road, Shepherds Fold. It passes obliquely across the small field to a gap in the hedge along its eastern field edge, and then traverses the edge of the adjacent agricultural field along one-and-a-bit sides to exit onto Dulgate Lane, a formal Byway. In its passage along this field, there is a substantial fence to separate the public and dog walkers in particular from the sheep periodically herded in there.

I wrote a letter to Councillor Mark Robinson of Breckland Council, whose portfolio gives him ultimate responsibility and copied it to you, but I had made a mistake with your address. Here it the letter:

Mill House, 7 Mill Lane
Swaffham
Norfolk PE37 7EU
May 22, 2019

Councillor Mark Robinson
Executive Member for Community Leisure & Culture
The Cabinet, Breckland Council
Elizabeth House
Walpole Loke
Dereham
Norfolk
NR19 1EE

Dear Councillor Robinson,

I am writing to you with regard to a pathway rights of way issue in Swaffham that has been brought to my attention. I am presuming that such a matter will be amongst your responsibilities in Community Leisure and Culture, but if I am mistaken, could you kindly refer the matter to the correct authority?

I have been asked to review the issues as the Rights of Way Officer for Swaffham. The pathway in question arises from the south end of the road, Shepherds Fold (Swaffham), at grid point TF 82650770. At this point, the road leads directly, without a fence or gate, into a small quadrilateral grassy field, of the same name, that I am advised is owned by Breckland Council.

I am advised that the pathway was put in by the original developer of the area 30 years or so ago. I attach a Google Earth view of the area to illustrate what I am discussing. You can see the well-used path crossing the field obliquely, before passing through a large gap in the hedgerow. The path then turns right (south) along the west side of the agricultural field beyond to the southwest corner, where it abuts the extensively enforested large, old borrow pit, a substantial area that I believe may be owned by Anglia Water, as it has a pumping station at its southern end.

The path then turns easterly along the south edge of the farmer's field (I believe the farmer may be a Mr. Dennis) and traverses due east to Dulgate Lane, which it enters through a large, purposive gap in the fence.

The pathway is well used and compacted. Within the last 2 years, The farmer fenced off the entire pathway along the edge of his field with a custom-built permanent fence so as to allow him to use the field for sheep, separating walked dogs from his animals. I am told the farmer did this at his own expense.

Problems have arisen when Breckland Council workmen, in the week before the recent local elections, erected a substantial wooden fence around the Shepherdsfold field with a large metal grille placed over the opening in the hedgerow - completely obstructing the established and well-used footpath. There was no prior notification or inquiry. The workman apparently promised that a more permanent closure of the entrance through the hedgerow would be forthcoming.

Among the important issues here is a major safety problem. As the Swaffham Neighbourhood Plan states, there is an important need for many areas across the town to gain access to the walking routes on the east and west of Swaffham, including Peddars Way. Dulgate Lane is a Byway that affords just this opportunity. The housing development which includes Shepherdsfold Field is substantial and the sole walking route to the east is along this footpath. The map may suggest that continuing on down Watton Road is a possibility, only for the footpath to terminate close to this site, forcing pedestrians, with or without dogs, onto a narrow, busy, meandering road, along which it is unsafe to walk, particularly for children and the elderly.

The only alternative is to walk up into town and take to the roadbed of the North Pickenham Road, which is a long detour, and not exactly optimal either.

The main problem here is that the footpath remains unregistered on the Definitive Map and Statement, owing to its advent well after the National Parks and Access to the Countryside Act of 1949, that established the Definitive Map. There is a readily available history of usage of this pathway by the families in the local development and it will not be difficult to assemble a convincing public attestation in favour of a public right of way registration.

The absence of a definitive map registration has persuaded someone at Breckland Council that they are within their rights to just close it off arbitrarily. There has to be a motivation and is likely to involve a commercialisation of this small field. It also begs the rational question of how Breckland Council has come to own this small green space? It is not alone, because in the north of the development is another smallish grassy field, Heathlands, that is also reputed to be owned at Breckland. Is Breckland Bridge involved? There will be appreciable concern in Swaffham if the District Council feels that it can act with impunity without consideration for the welfare of the town and its people. I also do not believe that Swaffham Town Council was consulted about this pathway closure within its town boundary!

This is clearly an action that should not have occurred, and certainly not in this fashion. I suspect you may agree that there is appreciable evidence that the footpath has been used as of right, without impediment, and with full legitimacy by the public for many years. The obvious solution is for Breckland Council to cooperate fully in the Definitive Map registration. An owner has just to submit a simple dded form, and a request to Community and Environmental Services at NCC will elucidate how this is done.

The alternative is to fight an application to register the footpath as a public right of way. Should Breckland Council decide to do so, I do not believe you have much chance of winning, and it would likely end up with the expense of legal fees and charges related to a Planning Inspectorate tribunal, after forcing the local voters to assemble the information that will prove that the footpath should be registered as a public footpath by reason of a presumption of dedication. This is a quick and powerful way of achieving express dedication.

I hope you can put a stop to this and re-open the public footpath as quickly as possible.

Sincerely Yours,

L David Ormerod, MB,BS, MSc, MBA, FRCP, FRCS, DTM&H
Rights of Way Officer

I have corresponded with the Ramblers and they are in complete agreement with my assessment. I wish to share a letter from Mr. Ian Mitchell, the Footpaths Officer for the Ramblers in Norfolk.. He has insights into how Breckland Council may have acquired the rights to two small spaces in Swaffham, and he concludes, I am sure correctly, that they now wish to commercialise them.

Ian Mitchell

10:52 AM (5 hours ago)

to Ken, me

Ken

Without identification on a map it is a bit difficult, but I assume that what is being described could be one of two locations:

1. At the south end of the estate at the end of Shepherd's Fold there appears to be what would be grassed amenity land large enough for children to play football. In a modern development it is probably slightly larger than would be

written into the conditions as being necessary to provide for X number of dwellings as playing space. The Google Earth picture suggests that people do walk from it to the edge of the large field to the east to gain Dulgate Lane.

2. At the northeast end of the estate at the end of Heathlands there is a similar sized area of grassed amenity land accessible not only from the end of Heathlands but also from a car park off Hamilton Drive. Again such a space might be demanded as a play area in a modern development. Again Google Earth suggests that some people may be walking from it along the edge of a arable field eastward to Dulgate Lane.

I can see that both of these could be used together as a walk circuit linking Dulgate Lane and the estate roads, even without considering longer branching options.

The estate seems to have no other amenity areas. No doubt these have fallen to Breckland's control as a residual legacy from the developer. As playing areas for children, their use may have declined as the previous families of the estate have grown up and but not enough new young families have come into the estate. Breckland is no doubt seeing this as an opportunity to turn a penny. I am sure that at least 3 new houses can be built on each of the areas. Taken separately each development will have too few houses to make it necessary to provide a play area.

I agree that the only way to retain either what ever paths have evolved is to gather User Evidence with the approved forms. I usually try to send out your portrait version of the form, rather than the County Council's mixed landscape version. It really does need some one living locally to push this along, so if David is willing to do it, we should accept his work and back him when necessary.

Also if Breckland have fenced off what was amenity land, the residents nearby need to be mobilised to protest about the loss of their amenities. It could potentially reduce the value of their houses or the number of people they might appeal to when the residents come to sell.

Ian

I believe the issues are as follows

1. The FP is well used and is an important resource for the Highlands community.
2. It is not registered on the Definitive Map, and clearly Breckland do not wish it to be so, as they can commercialise it and presumably build 3-4 houses on both of the sites.
3. If we can shame Breckland into supporting an application for Definitive Map registration of the FP over their small property, it will be an easy correction, as all they have todo is to fill in a form.
4. What information do we have on the origin of this FP? Was it put in by the developer and planned for in the planning process for the Highlands? We have to find out who owns the surface of the path throughout its length into Dulgate Lane.
5. Breckland must remove the obstruction to the path with immediate effect. Not the least, they are in conflict with their responsibilities to Swaffham and to the Neighbourhood Plan that they have only just signed. This loss of amenity for the local residents is a serious issue and demands a sense of urgency.
6. Failing this, I respectfully suggest to the Council that they need to publicise the issue as Breckland have no leg to stand on and, as we know, like to do their business in secret. The residents of Highlands will only be grateful at perceived action, and make the collection of usage data easier. Mrs Oona Kelly will shortly be away and is seeking to identify locals who could front the effort.
7. I am prepared to organise the systematic collection of user information about both landholdings in consultation with the Ramblers, with whom I am in steady contact over other rights of way issues, and we can apply for their inclusion on the Definitive List. This would likely keep the areas as green spaces even if Breckland insist on their rights to pick up n bits of the town during their business in providing services in exchange for their precept.
8. May I suggest that Swaffham seeks reassurance from Breckland that such impunitive action from Breckland will never be repeated? Any pressure on Breckland can only be helpful.
9. Ian Mitchell's letter raises the question as to how Breckland have ended up owning two parts of a development within Swaffham that are used for recreational purposes by the residents. The land has presumably come from the developer. If so, there is a serious issue here, an unethical conflict of interest - as this "return" must surely have potential influence in the legitimate conduct of development, and therefore assumes the nature of a bribe. After all, it is not as if the acquisition is paid for, in the customary sense of the word, and may be given in exchange for present or future benefits.
10. How can it be in Swaffham's interests for the District Council to retain parts of developments for its own interests, that will supersede the interests of the town? Indeed, if land is to be set aside in a Swaffham development, why is it not set aside for the Swaffham Town Council which has the direct democratic authority and responsibility. This should not occur in my view. A letter of concern to the local government regulator or ombudsman might be useful, perhaps held in reserve.
11. The whole question of how Breckland can sweep up substantial parts of the Swaffham environment, just because it can be opportunistic, is an important issue. Not only is Breckland abusing the development process, but it also seized the Green Britain Centre, the commercial area surrounding it, and the old Railway property, which they did not pay for, and other resources from which money can be made, leaving the town with the toilets. This is not obligatory in District Councils. Downham Market, for example still own their own car parks and receive the revenue.

How sure are we that Breckland are always acting as they should? Is it not worth consulting the regulators or a local government lawyer to obtain an independent opinion as to what are the regulatory limits on the actions of Breckland, where, and when?

12. Were the Swaffham representatives on Breckland Council aware of this episode, and if not why were they not so advised?

There are a number of issues here, that I suggest may require your attention, and that of the Council. May I suggest that a robust response by Swaffham to Breckland over their unilateral closure of a well-used pathway and community resource ought to receive high priority as the pressure may help to assure their collaboration in removing the obstruction and getting 1-2 trouble-free pathways to Definitive Path registration?

With Best Wishes,

David Ormerod











