

(RR-037) ELAF: Use of public footpaths and proposed permissive paths / north-south greenway

- 1) Longfield Solar REP03_39 Appendix D the technical note states that walking, cycling and equestrian use will be permitted on all permissive paths. The opening up of permissive paths to equestrian users as well as walkers and cyclists is welcome and is in keeping with ELAF's ethos of Access for ALL and is welcome.
- 2) At the hearing on 29 September, there was some discussion on whether cyclists, whether pushing a bike or riding it, are allowed to use a public footpath. The question arose as the north and south ends of the proposed greenway / proposed permissive path route end on public footpaths and not on public roads or bridleways or cycle routes. As established during the hearing on 29 September, access to the permissive paths is available to walkers, cyclists and horse-riders from Noakes Farm Road – a public road which is crossed by the permissive route.
- 3a) Having sought advice, the concept that a bike may legally be pushed along a public footpath, without any permission being given, is incorrect. Reference is made to pages 25-27 section 2.6 "*Who can use which highway?*" in "Rights of Way – A Guide to Law & Practice" published by The Ramblers Association and the Open Spaces Society – commonly referred to as the "Blue Book" (it has a blue cover).
 - p25: *Cyclists have no right of way on a footpath.*
 - p26: *"A cyclist who rides on a footpath commits trespass against the holder of the land over which the path runs.... It is submitted that a bicycle is not a natural accompaniment of a user of a footpath, and that to push (or carry) one along a footpath is therefore to commit trespass against the landholder.."*
 - p27: *"If a person rides (or leads) a horse over a (public) footpath he commits trespass against the holder of the land."*
- 3b) So permission IS required for a cyclist to push a bike or to ride a bike on a public footpath. Without this permission, a cyclist's access to the permissive paths is as limited as a horse-rider's. The helpful AECOM map in Appendix D of REP03_039 from deadline 3 shows that:
 - only a short section (PP3) is available north from Noakes Farm Road before a short section of Terling footpath 25 [113_25] is encountered.
 - a slightly longer section (PP5) is available south from Noakes Farm Road before Boreham footpath 4 [213_4] is encountered.
- 4) DCO documents 4.4 Schedule of Negotiations and Powers Sought (APP-017 of February 2022) and 2.1 Land Plans (APP-006 of February 2022) with its key would indicate that the ownership of the land for the proposed fields of solar panels, shown with a pink wash, will pass from the Honourable John Frederick Strutt (and Lord Rayleigh's Farms Ltd) to Longfield Solar as the Land Plans key and the Description of Rights Sought says...

Pink Wash: Order land - freehold to be compulsorily acquired and in relation to which it is proposed to extinguish easements, servitudes and other private rights.

Therefore it would appear that Longfield Solar will be able to permit riding a bike or a horse on the public footpaths on the solar farm land to be acquired.
- 5) Turning to the new 2022 Highway Code Rule 54 referenced by Aecom / Longfield Solar in Appendix D of REP03_039. Rule 54 says

54. You MUST NOT take a horse onto a footpath or pavement, and you should not take a horse onto a cycle track. Use a bridleway where possible....

By comparison Rule 64 relating to cycling says. *64. You MUST NOT cycle on a pavement*
Laws: Highways Act 1835 sect 72 & R(S)A 1984 sect 129 are referenced in both cases.
The introduction to the 2022 Highway Code states that rules identified by the words "MUST (NOT)" are legal requirements.

6) Advice has been sought on the apparent differences between 3a) & 3b) and 5) as follows:

Highway Code at Rule 54 says that “You MUST NOT take a horse onto a footpath or pavement,” but it cannot mean an off-road public footpath, because the courts have ruled that section 72 of the 1835 Highways Act does not apply to off-road footpaths. Section 72 of the 1835 Act made it an offence to ride a horse (and later a bicycle, once they were invented) on a footpath by the side of a road, not on any footpath. It is about pavements only, not cross-field paths or other off-road paths. The material part¹ reads as follows:

“If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers ... ; every person so offending in any of the cases aforesaid shall ... forfeit and pay any sum not exceeding [level 2 on the standard scale], over and above the damages occasioned thereby.”

That Section 72 does not refer to off-road paths was settled in 1867 by the case of *The Queen v Pratt* (1867) L. R. 3 Q. B. 64. The court ruled that “footpath” is conjunctive with “causeway” and so means “footpath ... by the side of any road”. Lord Chief Justice Cockburn ruled that the prohibition “only extends to a footpath set apart for the use of foot-passengers by the side of a road.”²

It is therefore possible for a landowner or leaseholder to permit cyclists or horseriders to cycle or ride on a public footpath without their committing any sort of legal offence.

7) ELAF therefore request that, in keeping with NPPF 100, that the proposed permissive paths (arising from the associated use as internal vehicular access track) which provide increased access and connectivity of the network, are accessible to all – walkers, cyclists, runners, horse-riders and where practicable to mobility-impaired users.

(i) At the northern end, a connection to the permissive paths for cyclists and horse-riders, that is inside the pink wash land, could be to Rolls Farm Lane / Sparrows Farm Lane, which is a public road at the northern termination of Terling footpath 33 [113_33]. See Land Plan sheets 7 & 9.

(ii) At the southern end the final western sections of the footpath connections to Waltham Road – Boreham footpath 18 or 19 [213_18 or _19] are outside the order limits so would require the permission of the landowner. The other connection along the cable route would also require landowner permission. See Land Plan sheets 3 & 2.

Mrs Katherine Evans
Chairman – Essex Local Access Forum
3 November 2022

Footnotes

1. In full, HA 1835 section 72 reads “If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway; or shall tether any horse, ass, mule, swine, or cattle, on any highway, so as to suffer or permit the tethered animal to be thereon; [...] every person so offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding [level 2 on the standard scale], over and above the damages occasioned thereby.”

2. In full, Lord Chief Justice Cockburn said “The question turns upon the construction to be put on the first part of s. 72 ... and it appears to me very clear that the construction to be put upon it is, that it only extends to a footpath set apart for the use of foot-passengers by the side of a road. The highway [in this case] does not come within the section so understood, as it is not a footpath by the side of a road; for it must be taken to be a footpath only, that is a highway for foot-passengers only, no part being a road or highway for carriages. It was argued that we ought to distinguish between ‘pathway’ and ‘causeway,’ that the first word was used generally, and that it was only in the case of a causeway that it was necessary that it should be by the side of a road in order to bring it within the section. If that had been the intention of the legislature, the sentence would have run ‘upon any footpath, or any causeway set apart for the use of foot-passengers by the side of any road.’ It may be that it is subject of regret that there is no summary means of protecting such a footpath as the present; but it never could have been intended to make it an offence to drive over any footway. Footways often pass entirely through grass land, and it would be an extreme hardship on the owners of the land if this enactment applied to such footways.”