

WALSALL METROPOLITAN BOROUGH COUNCIL

DEVELOPMENT CONTROL COMMITTEE

19th JULY 2005

REPORT OF DIRECTOR SAFER WALSALL BOROUGH PARTNERSHIP

ATTEMPTED CLOSURE OF DEFINITIVE FOOTPATH 38 STROUD AVENUE TO REDPINE CREST

1.0 Purpose of Report

- 1.1 The purpose of the report is to bring to the Committee's attention difficulties experienced with the attempted closure of the above path and to request authorisation to withdraw from the closure process.
- 1.2 As the original decision to advertise and prepare the above stopping up order was made by a resolution of the Highway Committee, that resolution is still in force and will need to be varied.

2.0 Recommendation

- 2.1 The Committee is asked to authorise:
 1. The withdrawal of the Council in the attempted closure of definitive footpath 38 Stroud Avenue to Redpine Crest Willenhall in view of public objections and in doing so vary the resolution of the Highway Committee dated May 11th 2004.

3.0 Financial Implications

- 3.1 Legal costs have been incurred to get to this stage in the proceedings. However by withdrawing at this point we prevent further costs that would be incurred by taking the matter to a Public Enquiry. The Councils capital programme 2005 – 2008 includes a five year commitment to the programme covering this and other environmental/situational works. For 2005 – 2006 a budget of £250,000 has been allocated. Any funding not spent on this particular closure can be diverted to other similar works.

4.0 Policy Implications

- 4.1 None.

5.0 Equal Opportunities Implications

5.1 None.

6.0 Environmental Impact

6.1 By withdrawing from this particular closure we will not be addressing through closure the crime and anti social behaviour problems associated with this footpath/alley. However as an authority we must also consider the effect of the closure on the wider community and on land served by the Highway. Further investigation will take place into any further measures that can be taken to address the problem and to reduce problems experienced by residents adjacent to the footpath and in the wider community.

7.0 Legal Implications

7.1 The Countryside and Rights of Way Act 2000 created new provisions, namely Sections 118B and 119B of the Highways Act 1980 whereby Local Authorities in specified circumstances can make stopping up orders respectively for the purposes of crime prevention.

7.2 The provisions apply to footpaths, bridleways restricted byways and highways shown on the definitive map although this list is not exhaustive.

However the following specific criteria must be met before such orders can be made.

- The highway must be in an area designated by the Secretary of State for the purposes of Section 118(B)
- premises adjoining or adjacent to the highway must be affected by high levels of crime
- the existence of the highway must be facilitating the persistent commission of criminal offences; and
- it must be expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up or diverted.

7.3 In addition Section 118B (7) also provides that the Secretary of State shall not confirm any such Order nor shall a council confirm an unopposed order unless in addition to the above, they are satisfied that it is expedient to confirm the order having regard to all the circumstances and in particular:

(a) the extent the order is consistent with any strategy for the reduction of crime and disorder prepared under Section 6 of the Crime and Disorder Act 1998.

(b) in the case of a stopping up, the availability of a reasonably convenient alternative route, or if no reasonably convenient route is available, whether it

would be reasonably practicable to divert the highway under section 119(b) rather than stopping it up ; and
(c) the effect which the extinguishment or diversion of the right of way would have on land served by the existing highway.

7.4 The council wishes to withdraw the Special Extinguishment Order in respect of Stroud Avenue on the grounds that if the footpath were to be stopped up, crime would simply be displaced on to the adjoining private alleyways.

7.5 The council takes the view that the stopping up of footpath 38 Stroud Avenue to Redpine Crest would have a negative effect on the adjoining properties and accordingly paragraph (c) above could not be satisfied.

8.0 Wards Affected

8.1 Definitive Footpath 38 is within the Short Heath ward.

9.0 Consultees

Extensive consultation has taken place throughout the closure process as dictated by statute.

10.0 Background Information (see attached)

Nozmul Hussain

Director Safer Walsall borough Partnership

Background papers

1. Planning and Highways Committee Report May 11th 2004
2. Area Plan

Contact Officer

Steve Gittins (611 400)

Background Information

In May 2003, Walsall Council made an application to the Department of the Environment Food and Rural Affairs (DEFRA), seeking designated status for six areas of the borough under the Countryside and Rights of Way Act 2000. The application was successful and introduced powers that would allow applications to be made to close public rights of way (footpaths) for reasons of crime prevention.

On May 11th 2004 Walsall Metropolitan Borough Council resolved to use the new powers introduced by the above act and sections 118a and 119b of the Highways Act 1980 in order to close six sections of public footpath.

The powers were introduced in recognition of the limited scope for path diversions or closures under the grounds of crime prevention.

The procedures involved in the stopping up of a footpath are quite detailed. The procedures include the designation of the area in which the footpath is located and publication of the order and notices in accordance with the provisions of the Act, which provides members of the public with the opportunity to object to closure. There is also a great deal of consultation that takes place in order to get to this stage.

A phased approach has been adopted for progressing the six alleys designated for closure under this legislation.

The publicizing of the order incorporates notices on site, letters to interested parties (including residents) and publication in the press, an objection period of at least 28 days follows. It is during this period that any objections or representations in relation to the proposed closure will be received.

If no one makes representations or objections on the expiry of the 28 day period the Council can confirm the order as an unopposed order. If there are representations or objections, the Council cannot confirm the order. However the following courses of action will be open to the Council:

- The Council can decide not to confirm the order
- The Council can send it to the Secretary of State for a decision
- The Council can try and resolve the objections. If they are resolved the Council can then confirm the order

The Planning Inspectorate handles decisions on rights of way orders on behalf of the Secretary of State. The Planning Inspectorate may decide to hear the case for and against the order by means of a Public Inquiry. This can be a very lengthy process and one that is outside the control of the Council. In this instance a Planning Inspector will then decide if closure can take place depending on the result of the proceeding enquiry.

If no objections are received the order can be confirmed and the actual physical closure of the alley's can take place. This must obviously comply with all necessary permissions and planning regulations.

The order in relation to the closure of the footpath 38 Stroud Avenue to Redpine Crest was advertised on 28th February and the period for any objections or representations ended on 1st April 2005.

Whilst a number (six) of positive representations have been submitted a number (four) of objections have also been received. These include an objection from The Ramblers Association and also objections from local residents who are not all supportive of the closure as currently proposed.

It is fair to say that the successful closure of this alley is directly related to a series of private alleys that run adjacent to it (see attached plan). Whilst proposals have been put forward to close these alleyways (marked in red on the attached plan) we are unable to proceed due to the inability to secure complete resident support for the scheme. The private alleys are on land that is unregistered and of unknown ownership. In order to gate these private alleys complete resident support is required to prevent any subsequent legal challenge. The council also does not have authority to act on land it does not own.

In seeking authorisation to withdraw we are considering specifically the provisions contained in Section 118B(7) of the Highways Act 1980 and in particular

“the effect which the extinguishment order would have as respects land served by the highway.”

As such it can be seen that before any stopping up order can be confirmed, the Secretary of State has to be satisfied that the criteria for making an order has been satisfied, that it is expedient to confirm the order having regard to all circumstances and in particular to

“the effect closure would have as respects land served by the highway.”

In this instance we cannot ignore the fact that closure of the definitive footpath would almost certainly lead to increased problems for the residents whose properties back on to the private alleys. These alleys would provide an easy route to bypass the closure of the definitive path. Indeed this is a point made by a number of the objectors who it appears would support closure if the private alleys were also to be gated off. Residents are already complaining of problems experienced in these private alleys and these can be expected to

increase if the definitive footpath were to be closed whilst the private alleys remain open.

There are other points to consider but this is the one that realistically we are unable to meet. It is also worth noting this is not the only point local residents have put forward when objecting to the scheme.

It is felt that if this matter were to proceed to the next logical stage, a Public Enquiry the Planning Inspector would almost certainly pick up on this as an area in which the Council's case was lacking. Also, whilst we must consider the long standing suffering of residents who live adjacent to the footpath we also have a duty to consider the plight of those who could potentially suffer hardship as a result of its closure.

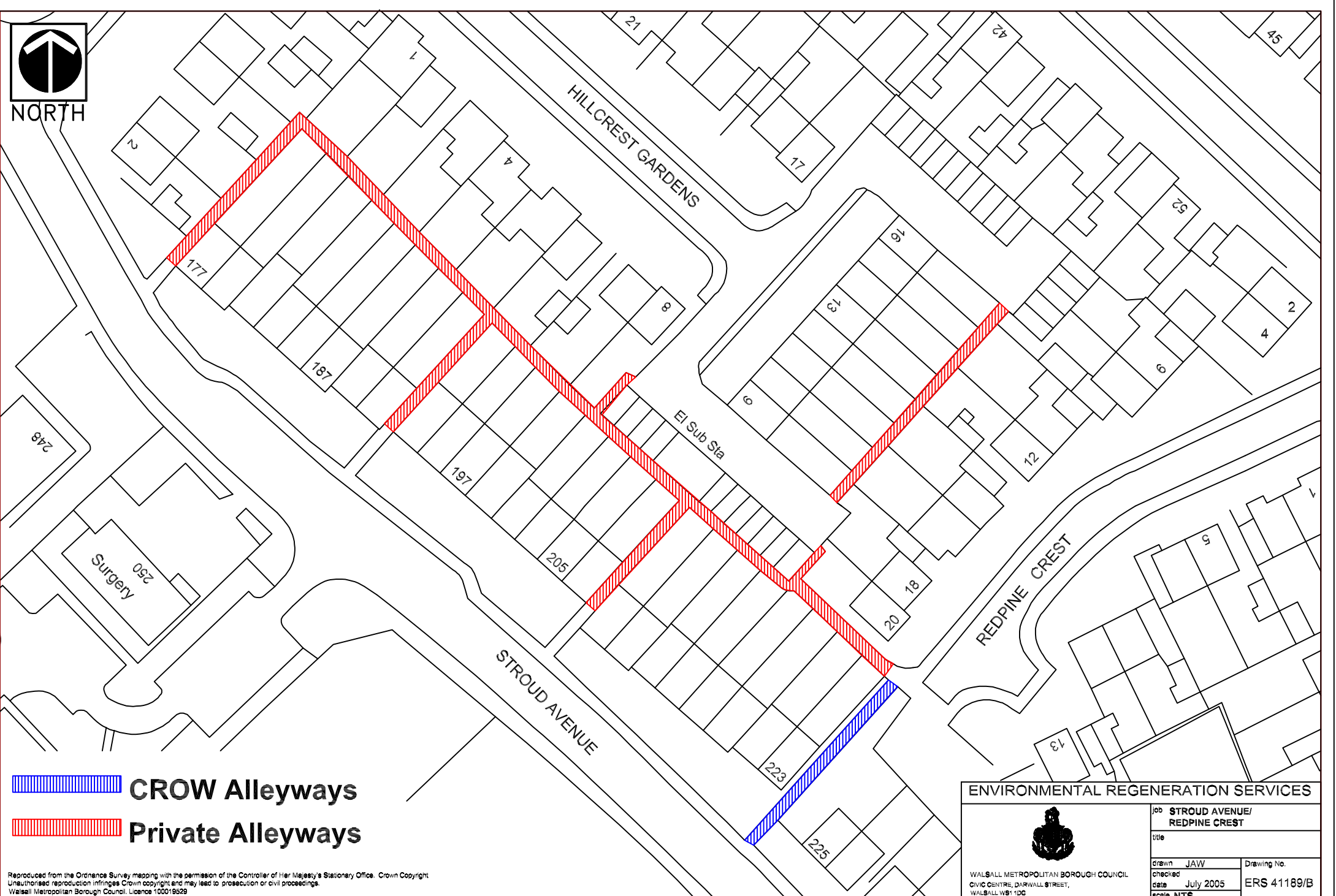
We will carry out a further investigation into the site in order to establish if any further measures can be taken to reduce the problems experienced and to increase the peace of mind of local residents.

As we have identified a clear weakness in our case at this stage, it is also prudent to consider the time and cost that would be required to take this case forward to a Public Enquiry or hearing , the outcome of which would more likely than not not be in the Council's favour.

As the original decision to advertise and prepare the above stopping up order was made by a resolution of the Highway Committee, that resolution is still in force and will need to be varied.




NORTH



 **CROW Alleyways**
 **Private Alleyways**

ENVIRONMENTAL REGENERATION SERVICES



job STROUD AVENUE/ REDPINE CREST	
title	
drawn JAW	Drawing No.
checked	ERS 41189/B
date July 2005	
scale NTS	

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