

Committee:	Rights of Way Committee
Meeting Date:	14 January 2015
Lead Councillor/s:	Councillor John Goodwin (Chairman)
Local Councillor/s:	Councillor Christopher Hudson and Councillor Robert Whiting
Director:	Mark Hardingham, Chief Fire Officer, Suffolk Fire and Rescue Service & Public Protection, Highways and Transport.
Assistant Director or Head of Service:	Alan Thorndyke, Head of Highway Network Management
Author:	David Last, Definitive Map Officer. Telephone 01473 264770

Claimed Public Footpath at Fenton's Wood - Kesgrave

Brief summary of report

1. A formal application for a public footpath through Fenton's Wood from Foxhall bridleway 49 to Wilkinson Drive, Kesgrave as shown on map 2 was made by Mr Ian Seeley on 9 October 2009. Map 1 is a location plan.
2. This application was prompted by the possibility of residential development within Fenton's Wood. The proposed development within the wood was part of a larger planning application. The part of the application within Fenton's Wood was refused planning permission by the local authority planners. Therefore with no imminent threat the claim was not given high priority, but is now being actioned under the prioritising scheme.

Action recommended

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| 3. It is RECOMMENDED that the formal application is rejected. |
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Reason for recommendation

4. Documentary evidence is minimal and the user evidence does not satisfy the required tests for dedication. It should be noted that a condition designating Fenton's Wood as a public open space came into force around 2011 when full planning permission was granted for adjacent residential development.

Main body of report

Documentary Evidence

5. There is minimal documentary evidence relating to this case, possibly because what is a relatively short stretch of alleged footpath is not significant enough to show on plans such as the Tithe Map or the private

county maps of Hodskinson, Bryant or Greenwood. These documents are not known for depicting footpaths in any case.

Estate Plan – South Part of Kesgrave Hall 1829 (ref: HD11:475/1858)

6. This plan shows the plot now known as Fenton's Wood although it is not depicted as a wood at this date. It is annotated as 'Little Heath' with there being no indication of a route through it.

6 inch Ordnance Survey Map 1880

7. The plot that is now known as Fenton's Wood is depicted but without tree symbols to depict a woodland and without any depiction of a route crossing it.

6 inch Ordnance Survey Maps 1905 and 1928

8. The plot is depicted as a woodland area with a double pecked line crossing it as per the claimed footpath line. The route has no annotation.

25 inch Ordnance Survey Maps

9. The depictions mirror those of the 6 inch editions. Bridleway 49 in Foxhall has a consistent double pecked line depiction on all 3 editions at both scales.

Landowner Evidence

10. A file note of a telephone conversation between a County Council officer and Mr Mark Chapman for Taylor Wimpey (developer/landowner) dated 16 October 2009, reveals a potential date for the 'bringing into question' of the public's right to use the route. Mr Chapman advised that Taylor Wimpey held an exhibition on 21 August 2009 and a public consultation. Mr Chapman stated in the telephone conversation that he recognised several names on the list of users for this case from the consultation exercise and said that he had made it clear at the exhibition that the land was private but Taylor Wimpey were happy to permit use until it was developed and to permit use of undeveloped parts afterwards.
11. A letter dated 24 March 2014 from Oasis Land Asset Management Ltd advised that as the legal owners of the land they "would resist any formalisation of this path." The letter continued to advise that they are happy to grant usage to the public on a permissive basis only.
12. Following consultation a further letter was received from Oasis Land Asset Management Ltd, dated 22 May 2014, which attached a completed landowner's information form. This confirmed that Oasis (Fentons Wood & Hartree Way) Ltd owns the land and is opposed to the claim. They have owned the land since mid February 2014, and had known of the land for 18 months before that. Oasis has taken no action to indicate to the public that the route is not a public right of way and acknowledge public use of the route on foot. They would be agreeable to establishing a permissive right for which the alignment would have to be agreed so as not to interfere with the rights of any landowner to use the area for alternative uses.

User Evidence

13. 21 user evidence forms and one user's letter have been submitted in support of the route and are summarised in tabular form at the end of this

report. The forms are all dated 2009 which is in line with the date of the developer's exhibition and the formal application being made.

14. The majority of use is equally on foot or bicycle and for relatively recent years. There are four long term users going back to the early 1970s. Of these 4, the information from one has been confirmed by face to face interview although this person is not willing to attend an inquiry; another has been confirmed by telephone interview and is willing to attend an inquiry, despite indicating otherwise on the evidence form. The remaining two were not in when the officer attempted to visit and have not made contact.

Site Visit – 13 December 2013

15. It was observed that recent storm damage had felled a number of trees and whilst nobody was clearing at the time of the visit, there was evidence of trees being cleared and cut up, with red/white safety tape cordoning off fallen trees (it is not known who erected the safety tape).
16. A main worn path leads through the centre of the wood, as depicted on map 2 attached. Other smaller paths also exist around the edges within the wood. Dog walkers were observed around the wood on the main and smaller paths and a number of people, who appeared to be parents returning from the school run, were walking through the wood via the main path.

Site Visit – 21 March 2014

17. Contractors with heavy clearing machinery and skips were working in the wood, presumably clearing the remaining storm damage, or possibly tidying up for the new landowners. Other worn paths were now more evident around the wood. Arriving just before 9.00 am many parents with children were witnessed using the route on their way to the nearby Cedarwood Primary School.

Woodland & Open Space Management Plan for Kesgrave – March 2012

18. As part of the planning condition for the residential development adjacent to the wood, a management plan was required to be produced for the woodland. Alongside the issues of tree and wildlife preservation the plan required there to be public access to the area. It did not however go as far as making specific requirements for a defined public right of way, but does identify the area as being one the public can visit.

Statement from Mr Christopher John Fenton dated 9 July 2014 (former landowner)

19. Mr Fenton advised that the wood and land to its north was purchased by his father in 1932, who later gifted it to his wife and children, so his ownership of the wood dated from around 1986.
20. In the early days of Mr Fenton's family's ownership of the wood, attempts were made to advise people that the area was private, by verbally telling people and the use of notices and barriers. One notice was for a time attached to a tree at the southern end of the route. However, as the Grange Farm Estate grew, preventing use became more and more difficult and eventually impossible to enforce, especially with the inclusion of a condition in the 1987 outline planning permission for the Grange Farm Development designating the wood as a public open space.

Suffolk Coastal District Council

21. Suffolk Coastal District Council confirmed in emails dated 24 July 2014 and 28 July 2014 that the planning permission granted for the land adjacent to the wood included a condition requiring Fenton's Wood to be designated a public open space, which came into effect around 2011.
22. Further information was received from the district council in an email dated 28 August 2014. There is no requirement for applicants to advise when development commences after planning permission has been granted. The wood is protected by a 'Tree Preservation Order' and the authority's preference is for it to remain woodland, but this would not prevent someone from making an application and appealing any refusal of planning permission. Fenton's Wood was shown as a Public Open Space in documents relating to outline planning consent for the Grange Farm Development dated 21 December 1987.

Legal Considerations and Conclusions

23. Section 53 of the Wildlife and Countryside Act 1981 provides that the definitive map and statement should be kept under review and modified if there is evidence to support a modification.
24. In consideration of the documentary evidence, the route (and the wood) have been depicted on Ordnance Survey mapping since the turn of the 20th century, having not been depicted earlier. There is however no documentary evidence to show that the route is public.
25. Section 31 of the Highways Act 1980 provides that a route is deemed to have been dedicated as a public right of way if it has been used by the public as of right for a period of 20 years and there is no evidence during that 20 year period of an intention not to dedicate the route. The 20 year period is calculated backwards from the date on which the public right to use the route was brought into question. The onus is on the landowner or person acting on their behalf to show that dedication has not taken place.
26. Section 53(c)(b) of the Wildlife and Countryside Act 1981 provides that a modification order be made if the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public right of way.
27. 2009 appears to be the date when the public's right to use the route was brought into question, following public meetings and consultations organised by the developers who have since built the surrounding houses. These actions prompted the submission of the formal application the same year.
28. Four users (which is considered to be a bare minimum) show use during the period 1989 – 2009, however only two of these have confirmed their evidence in 2014, with just one advising they would attend a public inquiry.
29. There also appears to be more than one alignment used within the wood. People passing straight through, possibly on school runs, shopping at Tesco or on longer walks, are likely to use the main path through the middle, whereas some local dog walkers appear to walk around the edge inside the wood, often letting their dogs off the lead.

30. Whilst there is evidentially a large volume of current and recent years' usage, there are only four witnesses that meet the criteria for Section 31 dedication over the 20 year period up to 2009, with only two of these confirming their evidence and possibly only one willing to speak at an inquiry.
31. At common law there is no requirement that 20 years use be shown. The more intensive and open the user evidence, and the more compelling the evidence of acquiescence by the landowner or the person/persons acting for him/her/them, the shorter the periods of use needed to raise the inference of dedication.
32. In this case, as well as the four long term users detailed earlier, there are many users who have completed evidence forms showing regular use from 2005 approximately to 2009 when the evidence forms were completed. A visit at any time of day seems to coincide with use of the route/wood by members of the public, especially around school start and end times when the claimed route appears to be used by a large volume of users, predominantly on foot, but with a few cyclists.
33. Despite there being no mention by the users of any form of challenge to use until the public meetings/consultation regarding development took place in 2009, there was no evidence of an intention by the landowners to dedicate a public route. The Fenton family for many years resisted public use of the route prior to outline planning permission for nearby development being granted in 1987, subject to the wood becoming a public open space. In 2009 the wood was sold to Taylor Wimpey, who submitted a planning application to build houses within the woodland. Taylor Wimpey held a public exhibition during the planning process, at which they made it clear that they regarded the land as private but were happy to permit use on a permissive basis. This position was maintained by Oasis Land Asset Management Ltd when they acquired the land in 2014.
34. To conclude, it is considered that there is no documentary evidence to show the claimed route having public rights and the user evidence for the qualifying period of dedication (1989-2009) is not sufficient to show that Section 31 dedication had taken place during this time. Considering common law dedication, it has been shown that 3 successive landowners (Oasis Land Asset Management Ltd, Taylor Wimpey and the Fenton family) going back to 1932 were opposed to a public right of way. However, since the land on three sides of the wood has been developed, the wood has been designated a public open space, which therefore permits public access.
35. It is therefore RECOMMENDED that the formal application is rejected, with all parties being advised accordingly.

Sources of Further Information

- a) Estate Plan – South Part of Kesgrave Hall 1829 (ref: HD11:475/1858)
- b) 6 inch Ordnance Survey Maps 1880, 1905 and 1928
- c) 25 inch Ordnance Survey Maps

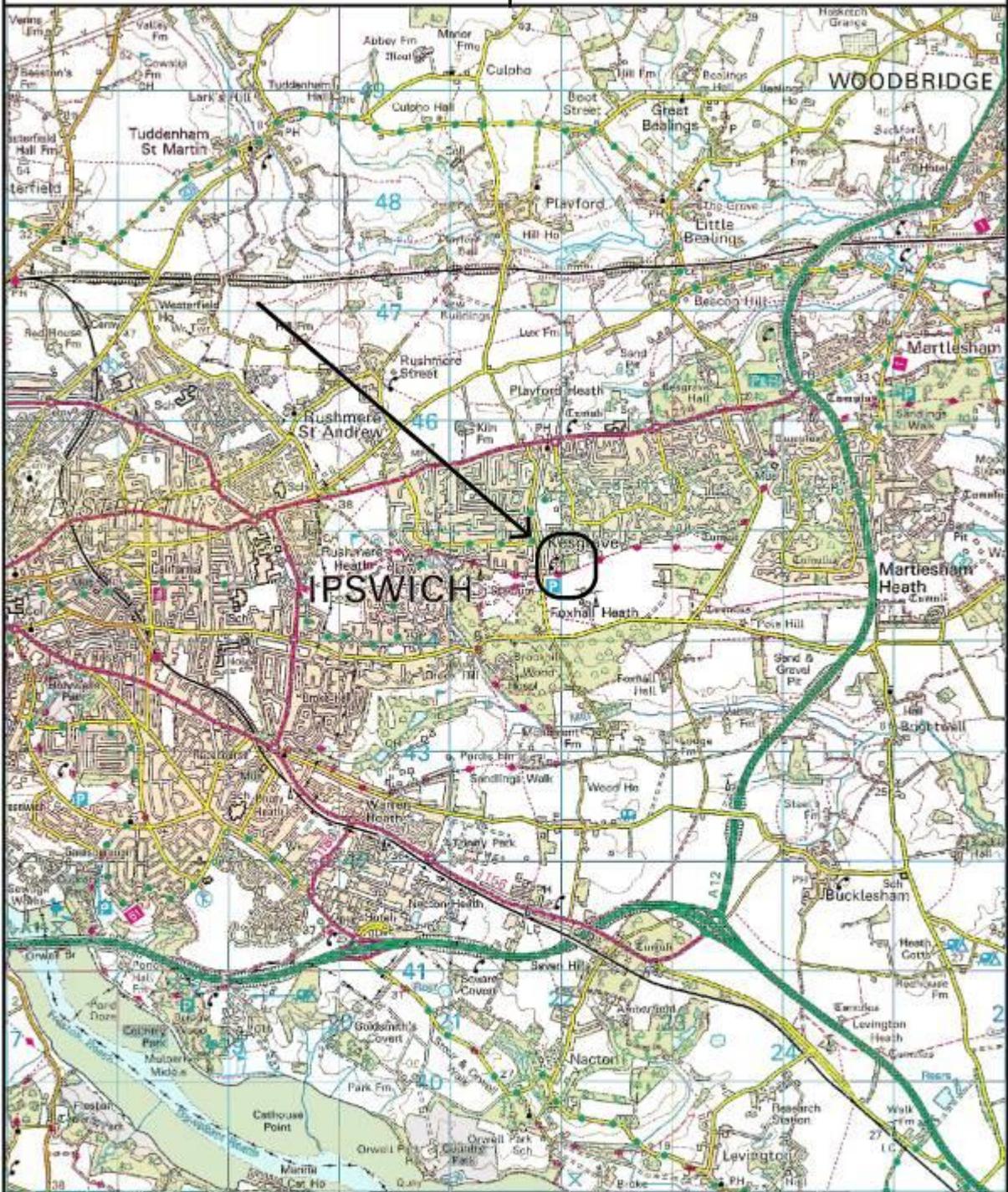
- d) Note of telephone call dated 16 October 2009 from Mr Chapman of Taylor Wimpey
- e) Letter dated 24 March 2014 from Oasis Land Asset Management Ltd
- f) Letter dated 22 May 2014 from Oasis Land Asset Management Ltd
- g) 21 User evidence forms (+ 1 letter)
- h) Formal application dated 9 October 2009
- i) Woodland & Open Space Management Plan for Kesgrave. March 2012.
- j) Statement by Mr Christopher John Fenton dated 9 July 2014 (former landowner)
- k) Emails dated 24 July 2014, 28 July 2014 and 28 August 2014 from Suffolk Coastal District Council

Name	Years + Use	Frequency	Description	PI	Conf	Comments
Mrs J I Barker	07-09=2 F	Several times a year	Grid refs	N	Y	To reach Tesco, tennis courts and just for a walk. Advised in 2014, no longer uses route.
Natalie Bloomfield & Craig Sutherland	08-09=1 FB	200+ per year	Grid refs	Y	Y	Cycle rides & walks around Grange Farm/Kesgrave.
Margaret E Broom	96-09=13 F	192 approx. per year	Grid refs	Y	Y	Walking dogs, enjoying peace and wildlife.
Mr James Cornish	07-09=2 FB	Twice daily	Grid refs	Y	N	Used to reach bridleway from Wilkinson Drive/Kinsey View.
Sheila & Clive Denny	06-09=3 FB	Once a week	Grid refs	Y	N	Pleasure walking and biking.
Mrs L Francis	15 yrs to 2014 F	Daily	Grid refs	?	Y	Daily dog walking.
Katie Hazelton	05-09=4 FB	At least once a week	Grid refs	Y	N	School run, bike rides, walks.
Mr Brian Hulls	96-09=13 F	20-25 per year	Grid refs	Y	N	Walking dog and rambling.
Clancy Joycutty	07-09=2 FB	Many times a year	Grid refs	?	N	Walks/Cycling from Wilkinson Drive to Bell Lane and Martlesham.
Chris & Barbara Makepeace	71-09=38 F	Several times a year	Grid refs	?	N	A walk between Bell Lane and Martlesham. <u>(20 years+ x 2)</u>

Mr & Mrs Miller	06-09=3 FB	100-150 per year	Grid refs	Y	Y	To visit son's house, pick up grandchildren from Cedarwood School & for leisure walks. In confirming evidence advised that use is now reduced to approx. 20 times a year as son and grandchildren no longer live in Kesgrave.
Dr A Rajic	06-09=3 FB	Several times every day	Grid refs	Y	N	To reach Tesco, town, a friend's house or just a walk.
Emma Ruddell	07-09=2 F	100+ per year	Grid refs	Y	N	Walking in woods.
Ian Seeley	04-14=10 B	Circa 450 times a year	Grid refs	Y	Y	Grange Farm to Ipswich & return for travel to/from work.
Darren Scoulding	2009=1 FB	On a weekly basis	Grid refs	N	N	To reach Tesco and Bell Lane.
Mrs Claire Southgate	73-14=41F	Approx 300 per year	Grid refs	Y	Y	Dog Walking and rambling. <u>(20+ years).</u> Advised in May 2014, used daily up until recent when dog passed away. Not likely to get another dog so future use will be less. <u>Interviewed by telephone on 15/5/14.</u>
Mrs Gill Thomas	06-14=8 F	Nearly every day	Grid refs	Y	Y	Walking dogs and with grandchildren to Longstrops.
Catherine Thorley	08-09=1 FB	Once every 1-2 weeks	Grid refs	Y	N	Recreation walks around woods, Foxhall Stadium, Kesgrave Sports ground.
Richard Thorley	05-09=4 FB	300+ per year	Grid refs	Y	N	Dog walking, walking cycling with children.

Mr P H Warnes	45 yrs to 2014 F	Daily	Grid refs	N	Y	Blackdown Ave Rushmere St Andrew to Dobbs Lane Martlesham Heath. Daily walks and rambling. <u>(20+ years). Interviewed in person on 21/5/14.</u>
Mrs Joanna Wildon	06-09=3 F	Twice a week if not more	Grid refs	?	N	To reach Bell Lane, Foxhall Speedway, Penzance Road and Post Office.
Jason Yeomanson	05-09=4 FB	300+ per year	Grid refs	Y	N	Walking in wood & taking child to school

F = Use on foot
B = Use by bicycle



KEY

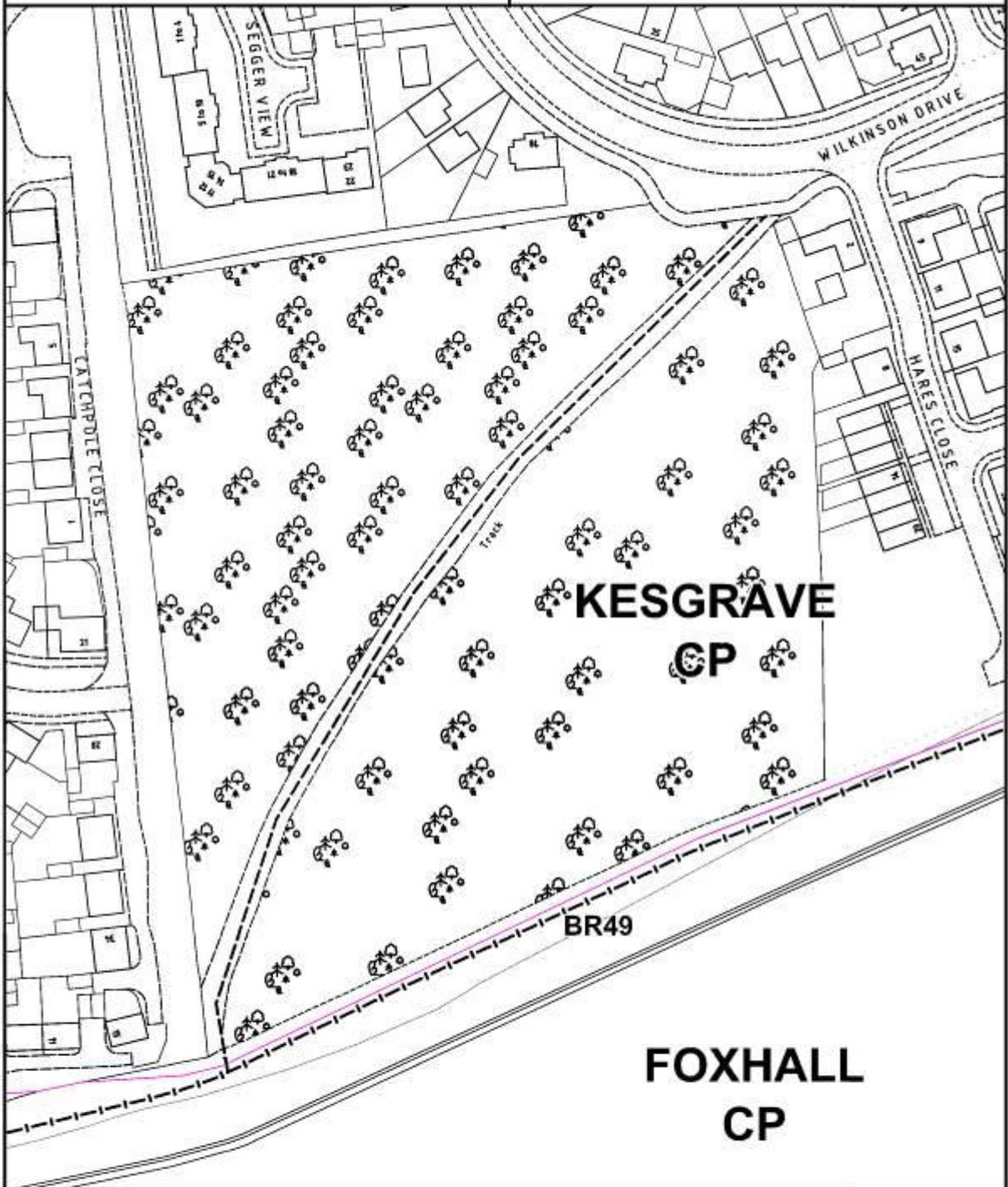
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Suffolk County Council

Director of Economy, Skills and Environment;
Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX

LOCATION PLAN



KEY

-  Claimed Public Footpath
-  Existing Bridleway
-  Parish Boundary

SCALE: 1:1250



Director of Economy, Skills and Environment;
Endeavour House, 8 Russell Road, Ipswich, Suffolk. IP1 2BX

**CLAIMED PUBLIC FOOTPATH
FENTONS WOOD
KESGRAVE**

