



## Order Decision

Site visit on 1 December 2015

**by Mark Yates BA(Hons) MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 21 January 2016**

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### **Order Ref: FPS/L2820/5/2**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the Kettering Borough Council (Part of Bridleway (UA12), Diana Way, Hogs Hollow, Burton Latimer) Stopping Up Order.
- The Order was made by Kettering Borough Council ("the Council") on 11 February 2015 and proposes to stop up a section of Bridleway UA12, in the parish of Burton Latimer, as detailed in the Order Map and Schedule.
- There were two objections outstanding<sup>1</sup> when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed subject to the modification set out below in the Formal Decision.**

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### **Procedural Matters**

1. I undertook a visit to the site on 1 December 2015 accompanied by the interested parties.
2. Site plans were provided to me with the background papers and these should have been available for people to inspect at the Council's offices. The full size versions available at the site visit assisted with an interpretation of the location of various features within the development and these should also have been in the public domain. On this basis, I accepted the provision of the relevant plans but I declined to take an additional plan as it had not been tendered as part of the submissions in relation to the Order.
3. This Order supersedes a previous Order made to stop up the bridleway which was rejected by the Secretary of State due to a drafting error.
4. The applicant for the Order, Orbit Homes (2020) Limited ("Orbit"), questions the validity of the objections sustained to the Order. Counsel's opinion was sought on this matter and she advised that the Order needed to be referred to the Secretary of State for determination in light of the objections received. Nonetheless, Orbit requests that I consider whether each objection constitutes a valid objection and whether the objections were duly made with reference to the rules for the interpretation of legislation and paragraph 5.29 of Department for Environment, Food and Rural Affairs Circular 1/09 ("Circular 1/09").
5. The objections sustained to the Order were submitted within the period specified in the notice for the receipt of objections or representations to the Order<sup>2</sup>. Orbit tried to persuade the objectors to withdraw their objections and when this failed the Council referred the Order to the Secretary of State for determination. This suggests it was acknowledged that the objections were

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<sup>1</sup> This is subject to the issue outlined in paragraph 6 below.

<sup>2</sup> 19 February 2015 – 19 March 2015

- valid. Further, reference is made by the objectors to the extent of the use of the bridleway and they object to its closure. In my view, these objections are perfectly valid and I concur with the advice obtained on this matter.
6. An additional party, Burton Latimer Town Council, has made submissions in opposition to the Order. The town council has also provided an unsigned objection letter, dated 6 March 2015. I cannot be certain that this letter was actually submitted and received by the Council. Nonetheless, I have considered all of the town council's submissions in reaching my decision.
  7. I note that the Order specifies that the section of bridleway to be stopped up has a "*maximum width of 3 metres*". In contrast, the definitive statement records a width of 12 feet for the bridleway. Therefore, I consider that, if confirmed, the Order should be modified to state that the width of the bridleway to be stopped up is 12 feet.

## **Main Issues**

### ***The statutory test***

8. If I am to confirm the Order, I must be satisfied that it is necessary to stop up the bridleway to enable development to be carried out in accordance with the planning permissions granted.

### ***Other material considerations***

9. Whilst the merits of the planning permissions granted for the site is not an issue before me, the impact of a stopping up on particular parties is a material consideration. This is reflected in paragraph 7.15 of Circular 1/09, which advises in respect of Orders made under Section 257 of the 1990 Act:

*"That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order".*

## **Reasons**

### ***Whether it is necessary to stop up the bridleway to enable development to be carried out***

10. Planning permission was granted on 19 March 2013 for the erection of 112 dwellings with associated garages and external works (ref: KET/2012/0228). A second planning permission was granted on 22 May 2014 for a development of 7 dwellings (ref: KET/2013/0708).
11. A condition in the permissions requires the stopping up or diversion of the bridleway<sup>3</sup> before works in relation to particular properties can commence. The imposition of such a condition is contrary to the guidance contained in paragraph 7.11 of Circular 1/09 and there is an element of doubt regarding whether it would be necessary to stop up a right of way where reliance is only placed on this type of condition. However, it is apparent from my visit to the

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<sup>3</sup> Incorrectly referred to in each condition as a footpath

site and the plans provided that the developments would directly impact upon the bridleway. This is notable in connection with plot 101 where the property would be built over the majority of the width of the bridleway and to a lesser extent in relation to plot 55. The boundary fencing in relation to particular properties would also impact upon the bridleway.

12. Having regard to the above, I conclude that it is necessary to stop up the bridleway to enable development to be carried out in accordance with the planning permissions granted for the site.

***The extent to which the stopping up would disadvantage members of the public generally or persons whose properties adjoin or are near to the bridleway affected by the Order***

13. There are two roads within the development which in turn provide access to Hawthorn Road. A path connects the northern estate road with Hawthorn Road. The roads, adjacent footways and additional path are for the most part complete and would link with the unaffected section of Bridleway UA 12. A permissive path agreement is in place to provide for public access until such time as these routes are adopted by the highway authority. Paragraph 7.8 of Circular 1/09 advises wherever possible against the use of alternative routes which follow estate roads. However, in this case, no other alternative appears to be available within the constraints of the development for which planning permission has been granted. An additional alternative route is available via Diana Way.
14. The information provided by the objectors is supportive of regular use of the bridleway prior to its temporary closure<sup>4</sup> due to the undertaking of works in relation to the adjacent site. In this respect, the current condition of the bridleway appears to reflect the fact that it was closed for a period of time and the vegetation has only recently been cut back. Nonetheless, I found the unaffected section of Bridleway UA 12 to the north-west to be in a very poor condition after a spell of wet weather and it was difficult to walk during my visit<sup>5</sup>.
15. I consider that there is the potential for the bridleway to become muddy during spells of inclement weather. The use is also stated to be restricted to daylight hours, presumably due to the lack of lighting. In contrast, the alternative routes would have the advantages of providing the public with a sealed surface and routes which benefit from street lighting and that are overlooked by properties. They should therefore provide secure routes that are available at all times albeit over a slightly further distance.
16. The bridleway does offer a route free from motor vehicles and in this respect it could be preferable to the alternative routes. However, pedestrian users would be able to use the 1.8 metres wide footways. Ramps are also in place to restrict the speed of motor vehicles traveling along the estate roads. Whilst I note the issue regarding people letting dogs off their leads on the bridleway, I am not convinced that this is significant in highway terms.
17. Although I acknowledge that there would be some potential disadvantages for the public arising out of the Order, I do not find that there would be any significant loss for the public if the section of bridleway is stopped up. Nothing

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<sup>4</sup> In accordance with the Road Traffic Regulation Act 1984

<sup>5</sup> I note from the relevant site plan that improvements to this section are proposed to be undertaken

has been provided to suggest that the stopping up will have any additional impact on persons whose properties adjoin or are near to the bridleway affected by the Order.

### **Conclusions**

18. The stopping up of a section of the bridleway is necessary to enable development to be undertaken in accordance with the planning permissions granted for the site. Further, the importance of the housing development, including the provision of a large proportion of affordable housing, is apparent from the submissions in support. Overall, I am not satisfied it has been shown that there are any disadvantages to the public arising out of the stopping up that are sufficient to outweigh the benefits of confirming the Order.

### **Overall Conclusion**

19. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with a modification.

### **Formal Decision**

20. I confirm the Order subject to the following modification:

- Delete "*having a maximum width of 3 metres*" from the eighth line of the description in Part 1 of the Order Schedule and insert "*having a width of 12 feet (3.6 metres)*".

*Mark Yates*

**Inspector**