



# Order Decision

Site visit on 25 October 2016

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

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

**Decision date: 23 November 2016**

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## Order Ref: FPS/K0235/5/1

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the Bedford Borough Council (Bedford: Part of Footpath No 18) Public Path Diversion Order 2016.
- The Order was made by The Bedford Borough Council ("the Council") on 19 February 2016 and proposes to divert a section of Bedford Footpath No.18, as detailed in the Order Map and Schedule.
- There was one objection outstanding 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 an unaccompanied visit to the site on 25 October 2016.
2. The objection sustained by Mr Cowling<sup>1</sup> was made within the timescale prescribed in the notice of the making of the Order and the Council subsequently made attempts to persuade him to withdraw his objection. It would not in my view be appropriate to disregard the points made by Mr Cowling in the subsequent correspondence given that he has made a valid objection to the Order.
3. The Council accepts that the annotation on the Order Map for the connecting Footpath No. 44 is incorrect. Therefore, if confirmed, the Order should be modified accordingly.

## Main Issues

### *The statutory test*

4. If I am to confirm the Order, I must be satisfied that it is necessary to divert the footpath to enable development to be carried out in accordance with the planning permission granted.

### *Other material considerations*

5. The merits of the planning permission granted for the development is not an issue before me. However, the impact of a diversion on particular parties is a material consideration. This is reflected in paragraph 7.15 of Department for Environment, Food and Rural Affairs Circular 1/09, which advises in respect of Orders made under Section 257 of the 1990 Act:

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<sup>1</sup> On behalf of the Open Spaces Society

*"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 divert the footpath to enable development to be carried out***

6. Planning permission was granted on 22 January 2016 for: *"Expansion of existing Brunel Road Depot site to allow for additional parking and storage including re-routing public right of way"*.
7. The need for the diversion arises out of the proposed physical obstruction of the path by fencing. It is also apparent that the change in use of the land would be incompatible with a public right of way. The path would cross a storage area and proceed over the proposed vehicular route through the site. It is not my role to consider alternative proposals to the permitted development, such as the erection of gates in the site fencing.
8. I conclude that it is necessary to divert the footpath to enable the development to be carried out in full.

### ***The extent to which the diversion of the footpath would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpath affected by the Order***

9. Mr Cowling is concerned about the path being used by cyclists and also mopeds. He points to the bends in the proposed path and the additional risks arising out of cyclists approaching pedestrians from behind. On this issue, the Council states that there is presently no evidence of use by cyclists and little evidence of past use. In addition, reference is made to the existence of a more appropriate route for cyclists in the locality. The Council says that 'No cycling' signs will be erected but no further action is proposed at the present time. Nonetheless, the Council does not rule out the possibility of action being taken to deter or prohibit use by cyclists and proposes to monitor the situation.
10. On the issue of the proposed signage, I have doubts regarding how effective this will be in deterring any cycling use. I am not in a position to comment on the extent of the use of the footpath by cyclists. However, the present nature of the path is not particularly conducive to cycling use. In contrast, the route via Bridleway 45 and Brunel Road provides a direct and well-surfaced route for cyclists. Whilst I note the proposed improvements to the surface of the footpath, the diverted route is less direct than the existing path. This means that the proposed path may be less appealing for cyclists.
11. Overall, I am not satisfied that it can be determined that the potential use by cyclists should be given any significant degree of weight. Further, if an issue arises with use by cyclists, the Council could take action to remedy the issue.
12. The proposed path will have a width of 2.5 metres with a surfaced section of 2 metres. This width should be sufficient to accommodate an enclosed footpath.

In respect of the section between points B and D on the Order Map, the Council says that this will proceed along a 4.5 metres wide corridor which will include vegetation, most probably in the form of a hedge, to soften the impact of the fence to the west. Further, the fencing will be angled at points C and D rather than being positioned at a right angle in order to improve visibility. In terms of Mr Cowling's comments on the past performance of the Council, I must proceed on the basis that the footpath will be maintained to the appropriate standard, including the cutting back of any overhanging vegetation. However, the proposed path follows a more convoluted route than the existing path and on this issue it is less convenient.

13. Mr Cowling refers to the ditch near to point A on the Order Map which he considers could be a safety issue. I noted the ditch during my visit, although its precise position to the proposed path was difficult to determine due to the extent of the vegetation in this locality. The Order Map indicates that the path would be adjacent to the ditch and there is nothing to show that this issue poses a risk to the safety of the public. Further, the Order will only take effect once the path has been created to the reasonable satisfaction of the Council and I would expect any necessary measures to be undertaken before the certification for the new path is issued. Clearly, there may be some safety implications at the present time where the existing footpath crosses the vehicular access to the east of the ditch.
14. It is apparent from the information provided and the Order Map that the B-D section of the proposed path will pass adjacent to the boundaries of properties on Maia Close. Whilst Mr Cowling points to the possible impact on the properties concerned, no direct information has been provided from the owners or occupiers of these properties to suggest that they are concerned about the diversion. Despite the occupiers of the properties not being personally notified of the diversion, the required statutory notices were placed on site and advertised in the local press. In terms of the description of the proposed path in the Order, I agree with Mr Cowling that it could be more detailed. However, its position is clearly shown on the Order Map. In the circumstances, I see no need to modify the Order in relation to the description of the proposed path.

### **Conclusions**

15. I have concluded that the diversion of the footpath is necessary to enable development to be undertaken in accordance with the planning permission granted for the site. In light of my conclusions regarding the other relevant matters, I am not satisfied that there are any disadvantages to the public generally, or for local residents, arising out of the diversion of the footpath that are of such substance to outweigh the benefits of confirming the Order.

### **Other Matters**

16. In terms of the references to particular aims in the Council's Rights of Way Improvement Plan, this document is not a material consideration in relation to Orders made under the 1990 Act.
17. The impact of other Orders made in relation to rights of way in the area and the presence or otherwise of dog bins on the footpath are not matters that are relevant to my decision.

### **Overall Conclusion**

18. 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**

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

- Delete "FP18" from the locality of point A on the Order Map and insert "FP44".

*Mark Yates*

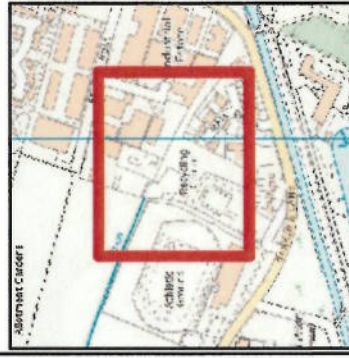
**Inspector**

**DIVERSION OF  
BEDFORD: PART  
OF FOOTPATH NO 18**

**PATH TO BE STOPPED UP  
PART OF FOOTPATH NO 18  
(A - B)**

**DIVERTED ROUTE  
PART OF FOOTPATH NO 18  
(A - C - D - B)**

**UNAFFECTED FOOTPATH**



File Ref: Bedford FP18



**BEDFORD**  
BOROUGH COUNCIL



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Date: 16/02/2016

