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## Order Decision

Site visit made on 13 February 2018

**by Rory Cridland LLB (Hons), Solicitor**

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

**Decision date: 19 March 2018**

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### Order Ref: ROW/3181700

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Cornwall Council (Footpath No.2 Falmouth (Part) and Footpath No.26, Budock (Part)) Bickland Industrial Park Extension Diversion Order 2014.
- The Order is dated 16 April 2014 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed subject to modifications.**

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### The Main Issues

1. The Order was made because it appeared to the Council that it was necessary to divert part of Footpath No.2, Falmouth and part of Footpath No.26 Budock ("the Footpaths") in order to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 ("the 1990 Act").
2. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the Footpaths in order to allow development to be carried out in accordance with planning permission already given but not substantially complete.
3. In addition, consideration should also be given to any disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near to the existing footpaths.

### Reasons

#### ***Whether it is necessary to divert the Footpaths to enable development to be carried out***

4. Planning permission<sup>1</sup> dated 25 October 2012 was granted on appeal<sup>2</sup> for the extension of Bickland Industrial Park to provide an industrial building (B2 use class), 12 bespoke hybrid/office industrial units (B1 use class) together with vehicle parking, estate roads, landscaping and public footpaths at Land adjacent to Bickland Industrial Park, Bickland Water Road, Falmouth, Cornwall ("the First Permission"). The Council has confirmed that the development was commenced within the required timescale and I have no reason to conclude otherwise.

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<sup>1</sup> Reference PA11/09595.

<sup>2</sup> APP/D0840/A/12/2172374.

5. A further planning permission<sup>3</sup> was granted by the Council dated 15 November 2016 for the erection of a further two hybrid office/industrial units (B1 use class) with car parking and landscaping on the same site which is also currently extant ("the Second Permission"). I have seen copies of both the First Permission and the Second Permission ("the Permissions") and the associated approved plans. It is clear that the Permissions relate to land crossed by the Footpaths and that the developments would not be possible unless those parts of the routes affected by the Order were diverted. I am therefore satisfied that it is necessary to divert the Footpaths in order to enable development to proceed.

***Whether the development is substantially complete***

6. At the time of my site visit, there was some indication of works having commenced in association with the Permissions and I noted some excavations works were taking place along the southern part of the site. However, these works were minor and the Footpaths were easily accessible and currently in use. Overall, I am satisfied that the development is not substantially complete.

***The effect of the Order on those whose rights would be affected by it***

7. The route to be diverted commences at Point A (as shown on the Order plan) and proceeds in a generally south-westerly direction along a well-defined earthen based surface for around 47 metres to Point B where it arrives at the parish boundary before proceeding in the same direction for a further 80 metres to Point C. It forms part of an ancient and well used route to Budock Church, a Grade II listed heritage asset.
8. In contrast to the above, the new route to be created would commence around 2 metres to the north of the existing route (shown as Point D on the Order plan) and would proceed in a generally south-westerly, south-south-easterly and then south-westerly direction for around 57 metres to Point E before crossing the parish boundary and continuing in a generally south-westerly direction for around 79 metres to Point C.
9. It is clear that, following the implementation of the Permissions, views from the diverted route would differ to those which existed at the time of my site visit. However, as noted by the Inspector when considering the First Permission, the diverted route would retain its spacious character and would remain a green and pleasant route. I agree with that assessment and although I accept that views will alter, I do not consider there would be any material loss of visual enjoyment in general.
10. While I note the concerns of Budock Parish Council regarding the loss of what is an historic and ancient route, it is clear from the written evidence that the overall impact of the proposal on the historic environment, including the Footpaths and their relationship with the nearby church, was taken into account by the Inspector as part of the First Permission. In considering whether or not to confirm the Order, I am unable to reconsider either the planning merits of the proposal or the principle of development in this location.
11. Consequently, while I acknowledge that views from the diverted route will alter and the historic alignment of the route would change, I do not consider the disadvantages flowing from the proposed diversion would be of any significance

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<sup>3</sup> Reference PA16/05629.

or would outweigh the clear benefits that would result from enabling the development to proceed.

### **Other Matters**

12. The Order, as drafted, contains references in the preamble to the First Permission. The form of Order required by Schedule 1 of the Town and Country Planning (Public Path Orders) Regulations 1993<sup>4</sup> does not require the planning permission to be specifically referred to and as such, I shall modify the Order to remove the reference to the First Permission.

### **Conclusions**

13. Having regard to these and all other matters raised within the written representations, I conclude that the Order should be confirmed subject to the modification described in Paragraph 12 above.

### **Formal Decision**

14. The Order is confirmed subject to the following modification:

- In paragraph one of the recitals the words 'Planning Reference PA 11/09595.' shall be deleted.

*Rory Cridland*

INSPECTOR

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<sup>4</sup> SI 1993 No.10.



Town & Country Planning Act 1990 Section 257  
Order Plan: Re File TAD 041

Parish: Falmouth Town and Budock CP Path Numbers: FP/304/2 and FP/202/26

Produced by Countryside AccessTeam: 25 March 2014



B10174

Call

THE CORNWALL COUNCIL (FOOTPATH  
No.2, FALMOUTH (PART) AND  
FOOTPATH No. 26, BUDOCK (PART))  
BICKLAND INDUSTRIAL PARK EXTENSION  
DIVERSION ORDER 2014

MAP NOT TO  
ORIGINAL SCALE

Retained  
part of  
FP/304/2

Part of  
FP/304/2  
to be  
Stopped Up

Parish Boundary

Part of FP/202/26 to be  
Stopped Up

BUDOCK CP

Revised Footpath  
in Falmouth

Road C 0087  
Indicative Centreline

FALMOUTH CP

Revised Footpath  
in Budock

Retained part of FP/202/26

OS SHEET SW 78/32

KEY  
Scale: 1:1,000

Footpath to be Retained:



Footpath to be Created:



Footpath to be Extinguished:



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