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## Order Decision

Site visit made on 7 January 2019

by **K R Saward Solicitor**

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

Decision date: 21 January 2019

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### Order Ref: ROW/3207764

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Bedford Borough Council (Turvey: Part of Footpath No. A5) Public Path Diversion Order 2018.
- The Order is dated 16 March 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Bedford Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### Preliminary Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection. In arriving at my decision I have taken into account all of the written representations.
2. I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map. Therefore, I attach a copy for reference purposes.

### Matters relating to the Order

3. The diversion is a 2m wide path part of which would run along a grassed 'track' of approximately 4.2m in width. At the time the Order was made the line of passage had been between fenced enclosures, but it is now open on one side.
4. The objector requests modifications to the Order to identify where the path would leave the track and for the centre line of the new route to be described as being 2m away from the nearest fixed point of the adjacent boundary.
5. The Council as Order Making Authority ('OMA') explains that the fencing was never erected to define a highway. Rather, the purpose was to establish a corridor of significant width for the convenience of the landowner to facilitate access by large machinery. The OMA maintains that because the co-ordinates of the new route are stored digitally in a geographical information system the position of the path on the ground could be established by global positioning methods even if all nearby fence lines were dismantled. It considers the Order Map to be sufficiently accurate to define the revised position of the path.
6. My attention is drawn to another Public Path Diversion Order made by the OMA in June 2018 in respect of Footpath A6, Turvey, where the diverted route was described with reference to the nearest fixed point of the adjacent boundary.

7. The OMA explains that the boundary referred to in that Order was a well-established hedgerow forming a substantial boundary that would remain as a significant landscape feature for an extended period of time into the future. By defining the centre of the new route a distance away from the boundary it gave in effect a buffer zone preventing side growth encroaching upon the path.
8. In this case, there is post and wire fencing alongside the proposed route rather than vegetation. The fencing could be removed. Indeed, there is no longer a fence along one side of the diverted route. To my mind it would not be sensible to describe an alignment by reference to a boundary feature that could easily be moved or removed. With modern day mapping techniques the Order Map should fulfil its intended purpose without causing difficulties.
9. It is also queried why the route could not be 4m wide along this stretch of track to comply with policy. According to the OMA, it was the policy of the former highway authority, Bedfordshire County Council, for new paths to be at least 4m wide. That policy was not adopted by the OMA and it has not been applied since 2009. Thus, there is no policy basis to require a path of greater width.
10. The objector seeks a further modification to record a kissing gate across the diverted route as a limitation in Part 2 of the Order.
11. Where a limitation is recorded in the Definitive Statement as affecting a public right of way it is conclusive evidence that at the relevant date the right was subject to that limitation.<sup>1</sup> However, limitations may or may not be recorded. If a limitation is recorded then the landowner would have the right to maintain a gate in that position.
12. The Council's practice is not to make Public Path Orders subject to limitations wherever possible in furtherance of providing an open and accessible network. A field gate has been erected for stock control purposes to prevent livestock entering a wooded area. In such cases, the Council prefers instead to utilise its powers under section 147 of the Highways Act 1980 to authorise the erection of gates on footpaths. By entering an agreement with the landowner it may include conditions about the construction, maintenance and operations as it sees fit. It will be a matter for the OMA to ensure that it can require removal of the gate if it is no longer needed.
13. In the circumstances, I consider that it is unnecessary to record a limitation. The objector is concerned that details of the arrangements will be unavailable, but the OMA is a public authority to whom a request could be made for access to information.

### **Main Issues**

14. The Order has been made in the interests of the owners whose land is crossed by the footpath proposed for diversion. By virtue of section 119 of the Highways Act 1980, for me to confirm the Order I must be satisfied that:
  - (a) the diversion to be effected by the Order is expedient in those interests;
  - (b) the new path will not be substantially less convenient to the public in consequence of the diversion;

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<sup>1</sup> Section 56(1)(e) of the Wildlife and Countryside Act 1981

(c) it is expedient to confirm the Order having regard to:

(i) the effect of the diversion on public enjoyment of the path as a whole, and

(ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it.

15. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order.

### **Reasons**

#### ***Whether it is expedient in the interests of the owner of the land that the path in question should be diverted***

16. The current definitive line of Footpath No. A5, Turvey ('FP A5') crosses land forming part of Abbey Farm. The Order has been made in the interests of the landowner.

17. The existing route intersects the farmland. It runs past paddocks where horses are kept and close to a working area where farm machinery and personnel operate. The diversion would take walkers to the field edge allowing horses to be paddocked more safely.

18. Not only are horses kept on the land, but cows and sheep are also grazed. As 'flight' animals the landowner submits that it is of paramount importance that contact with the public and their pets are kept to the minimum. Concern is raised that pregnant livestock could be particularly sensitive to disturbance.

19. The landowner reports that every year over the past 5 years loose dogs have caused a loss of one livestock. Injuries have also been suffered by livestock handlers and riders and to livestock after taking flight through fencing.

20. Clearly dogs should be kept to the definitive line, but it is possible that disruption could still be caused. The position of the existing path cuts across the fields and close by paddocks on either side bringing the public into close proximity with horses and other livestock.

21. By moving the path to the perimeters of the fields the likelihood of disturbance to livestock will be minimised. It would also free up opportunity for better management of the land and use for hay-making.

22. I am satisfied that it is expedient in the interests of the landowner for the footpath to be diverted.

#### ***Whether the new path will not be substantially less convenient to the public***

23. The width of the diverted route would be 2m whereas the existing route is of undefined width. At present, the path commences at the field edge at point A. It proceeds in a southerly direction through the fields in a straight line for most of its length. It is only the southern end of the route that the path turns sharply

to head in a north-easterly direction through woodland for a short distance to reach point B at the junction with Bridleway Turvey 5 ('BW5').

24. The diversion would start at the same point as the existing route. Around half of the diverted route would proceed in a straight line in a south-easterly direction along a grassed passage/track between paddocks. Midway along the diversion it would turn sharply to head south passing through and around an area dotted with trees before continuing through a strip of relatively dense woodland. The southern termination point would still join BW5, but around 104m further to the north.
25. There are curves in the southern half of the diverted route whereas the existing route follows straight lines with only one change in direction. Where the proposed route curves most noticeably it follows a natural line created by the trees. Some walkers may find the changes in direction less convenient than walking in a straight line, but for others the level of inconvenience may be minimal.
26. The terrain in this vicinity is gently undulating. Concerns are expressed over the condition of the grassed track. The objector found the surface to be uneven from grass tussocks and tracks left by vehicles.
27. The landowner explains that the land is ridge and furrow which by its very nature makes it an undulating surface. She believes that the tyre tracks were from farm machinery removing shavings for distribution on the land. The surface has since been levelled and put to seed. When I visited the surface was quite soft and uneven but it was easy enough under foot. There was no appreciable difference between the conditions of the two routes. I spotted indentations where vehicles had passed along the track for the new route, but they were not deep and the grass was not churned.
28. As the OMA points out, the new route is not yet a public highway. If any minor works are required to make the surface fit for public use then they can be undertaken prior to the Order taking effect.
29. The track remains in use by large agricultural machinery associated with the farm which could cause surface damage. That said, the space is wide enough for vehicles to avoid the path particularly as there is no longer fencing on both sides. Even if some occasional surface damage occurs there should still be space to pass. Moreover, once it becomes a public highway the route will need to be maintained to a suitable standard.
30. At 580m, the existing route between points A-B is 48m longer than the proposed diversion between A-C which is 534m in length. The route is therefore shorter for those users heading north along BW5. If a walker wishes to head south along BW5 or is coming from that direction then it will be longer to travel between points A-B and vice versa.
31. Where the southern end of the existing route passes through a strip of woodland, the land slopes and the ground is uneven. There are some protruding tree roots across the path. In comparison, the short stretch through the woodland for the proposed route is more even and easier terrain.
32. There is a gate along the existing route where it enters the woodland and so

there is no greater number of limitations from the erection of the kissing gate along the new route.

33. I conclude that for some walkers the new route will be shorter and more convenient than the existing route. Some others will find it less convenient where the new route is longer and for those who dislike following the curved alignment. Overall, I noted no appreciable difference under foot between the two routes. There is some risk of surface damage from agricultural machinery but I do not regard it as significant.
34. In the circumstances, I do not find that the new path to be *substantially* less convenient to the public.

***The effect of the diversion on public enjoyment of the path as a whole***

35. Since the Order was made, the fencing along the southern side of the track over which part of the diversion would run has been removed although fencing remains on the northern side. The objector had found the enclosure on both sides to give rise to a confined feeling affecting the level of enjoyment. The width is intended to remain to allow access by agricultural machinery used to maintain the surface of the land for equestrian pursuits.
36. Given the farming use of the land it seems unlikely that the 2m width of the path would be enclosed particularly as the path is set in from the boundary on one side. There is no reason to suppose that the fencing would be reinstated in the same place as before. Even if it were, it leaves a sufficiently wide corridor and any sense of confinement is likely to be very minor. The fencing that remains is low post and wire type allowing views through and above which alleviate any sense of enclosure for a walker.
37. Both routes pass through a strip of woodland to connect with BW5. Upon emerging from the woodland along the existing route, the views across the open fields are interrupted by a large agricultural style building. Similarly, it dominates views when heading south along the existing route which passes close by the building. The diverted route is further away from the building. In consequence it offers more expansive views of the landscape. Given the topography, the diversion offers further reaching views towards the village with rooftops visible from the edge of the woodland. Some people may also enjoy the variation offered by the walk past mature trees where the new route curves. Grazing animals can still be observed from the diverted route without passing as close to the farm buildings.
38. The objector describes it as unpleasant walking past and through stable bedding along the southern section of the new route. A photograph is provided to illustrate the point. The landowner responded to say that the stable bedding has been removed and the land since levelled and seeded. The OMA described it as a temporary measure for the storage of un-useable straw and emphasises that where necessary the surface will be levelled, compacted and re-seeded.
39. By the time of my visit it was still possible to see traces of where the straw was deposited and where the grass is yet to grow. Potentially the bedding could re-appear, but it could just as easily be deposited beside the existing route.

40. Objection is made that a sense of history will be lost by stopping up a footpath that is some 200 years old. The landowner and OMA contest the longevity of the path. The OMA confirms that the current definitive line was created by a Public Path Diversion Order that came into effect on 18 January 1993. Apparently, it was not shown on any Ordnance Survey map prior to that time. There is nothing before me to indicate that the existing route has any particular historical value that ought to be retained.

41. I do not consider that there would be an adverse effect on public enjoyment.

**The effect of the diversion on other land served by the existing path and the land over which the new path would be created**

42. The vast majority of the existing and new routes affect land owned by the applicant. Both routes connect with BW5 which is on adjacent land. A very small section of the existing route at point B belonging to the neighbouring landowner would be extinguished with a short length created on the neighbour's land at point C. Written confirmation has been supplied by the adjoining landowner to the OMA that they are content with the proposed diversion. The adjacent landowner did not raise any objection to the Order and has agreed to defer any costs that may arise from any claim for compensation.

43. Consequently, there is no evidence to give reason to believe that the diversion will have any adverse effect on land served by the existing route or on the land over which the alternative route will be created.

***Rights of Way Improvement Plan ('ROWIP')***

44. There is no suggestion that the Order is contrary to any material provision contained in a ROWIP.

***Whether it is expedient to confirm the Order***

45. I have concluded above that the Order is expedient in the interests of the landowner. The proposed route will not be substantially less convenient and I am satisfied that it is expedient for the Order be confirmed having regard to its effect on public enjoyment. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order without the modifications sought by the objector.

**Conclusions**

46. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

**Formal Decision**

47. I confirm the Order.

*KR Seward*

INSPECTOR

