



Order Decision

Hearing Held on 26 November 2019

by K R Seward Solicitor

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

Decision date: 03 December 2019

Order Ref: ROW/3221130

- 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. A6) Public Path Diversion Order 2018.
- The Order is dated 22 June 2018 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 3 objections 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 subject to modifications set out below in the Formal Decision.

Preliminary Matters

1. In arriving at my decision, I have taken into account all written representations and documentation as well as the oral submissions made at the Hearing.
2. As I have referred to points along the existing and proposed routes as shown on the Order Map, I attach a copy of the map for reference purposes.
3. One objection was made by Mr Gell as Secretary of the Bedfordshire Rights of Way Association. Mr Clarke has since taken over role who also made an objection in his own right. He has pursued the objections in both capacities, albeit there are no other members of the Association apart from Mr Clarke and Mr Gell. The third objection was made by the local branch of The Ramblers.
4. The Ramblers object only to the southern section of the proposed route between D-B on the basis that it considers there is a better alternative as proposed and discussed with the Council's predecessor authority some years ago. However, the test is not whether there might be a preferable alignment to the proposed route. With any proposed diversion there may be other routes which could be more desirable. My considerations are focused on the particular alignment as shown in the Order and not another route which may or may not be available.
5. I undertook an unaccompanied site visit the day before the Hearing. A further accompanied site visit took place on the day of the Hearing with representatives of the Council, as Order Making Authority ('OMA'), two of the objectors and the landowners. The Hearing remained open during the site visit to enable discussion to continue on points raised at the venue.
6. One of those issues concerned the wording contained within the final paragraph of Part 2 of the Schedule to the Order. This identifies the centre line of the proposed path between points C-D by reference to the 'nearest fixed point on

the adjacent boundary'. I queried which point this meant having seen a fence extending on the path side of the hedge. The OMA confirmed that the measurement was intended to be taken from the hedge rather than the fence. There was consensus between the OMA and the objectors that the measurement should be expressed as being from 'the root of the hedge'.

7. Upon close inspection whilst on site, it emerged that part of the hedge is on the far side of the ditch-line running parallel with the proposed path. Consequently, there would be a change in the measurement point partway between C-D with the available path running much closer to the ditch line in the approach to point C. The practical effect would be a narrowing of the path. The OMA did not wish the ditch line to be utilised as there are gaps and it may in time be culverted. After much discussion, the parties agreed that the wording should remain as drafted with the fence being taken as the nearest fixed point of measurement. The fence is in reasonable condition and may be expected to be present for the foreseeable future.
8. At the start of the Hearing Mr Clarke requested a modification to the description in Part 2 of the Order to record that the new path would run over a sleeper bridge placed across a stream not far from point B. It was agreed that a new penultimate paragraph be inserted in Part 2 to say "At OSGR 9502/5152 the surface of the highway shall consist of a bridge."
9. There is similarly a sleeper bridge across the watercourse before the kissing gate at point C. Discussion took place on whether this should also be recorded in the Order. The OMA would prefer it not to be mentioned. If included, it was agreed by the parties present at the site visit that another paragraph should be added to Part 2 to say: "The surface of the highway immediately south of Point C shall be supported by a structure to cross the watercourse".
10. Not only should there be consistency in approach, but section 328(2) of the 1980 Act provides that a bridge it is to be taken as a part of the highway. In accordance with Government guidance¹ the Order should define the route as intended, and therefore all bridges should be identified in the statement describing the way. Therefore, both bridges ought to be recorded by addition of the agreed wording. Neither modification would need to be advertised.
11. Entry to the garden of Abbey Farm along the existing footpath is via a field gate where a large log is placed in front. On the face of it, the gate appears to be locked although it transpires that the chain fastening can be un-hooked and the gate opened enough to allow passage. For the purposes of my considerations I shall treat the path as though unobstructed and readily accessible.
12. The measurements quoted in the OMA's statement of case for the existing and proposed footpaths differ from those cited in the Order. The OMA confirmed that the Order contains the correct measurements.

Main Issues

13. The Order has been made in the interests of the owner whose land is crossed by Footpath No. A6 ('FPA6'). 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;

¹ 'Authorising structures (gaps, gates and stiles) on rights of way' published by DEFRA

- (b) the new path will not be substantially less convenient to the public in consequence of the diversion;
 - (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.
14. I must also have regard to any material provision contained in a rights of way improvement plan for the area when considering the Order. In this regard the OMA has certified that its plan applicable for the period 2018-2023 contains no provisions directly relevant to applications under section 119. No-one has suggested otherwise and so I do not address this matter further.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted

15. The Order aims to divert the section of FPA6 which runs through Abbey Farm. Where the path leaves the long drive for the farm complex at Point A, it proceeds across grassland and through a gate into the private garden area of the farmhouse. It passes close by the rear windows allowing some views inside. The lawn area immediately behind the farmhouse, where occupiers might expect greatest privacy outside, is in full view of those using the path.
16. Given the close proximity of the existing path to the house and its route through the garden, there is a clear adverse effect on privacy for the owner of Abbey Farm who made the application.
17. As the path continues through the garden it passes near to agricultural buildings and the outdoor arena where horses are ridden and exercised. Stables and a large indoor arena are further away, but horses will be brought across the footpath to reach the outdoor arena. A business is operated from Abbey Farm as an equestrian centre. Competitions are hosted and lessons given to clients who bring their own horses. This includes training of disabled riders, some of whom are at international level.
18. The landowner explained at the Hearing how horses can get spooked by loose flapping clothing or unfamiliar dogs, especially if unleashed. One serious accident occurred around 2.5 years ago when a rider was thrown from their horse when a loose dog emerged through the field from the footpath.
19. The landowner maintains that the diversion will create a safer and manageable environment for all concerned. She acknowledged that it may have been better to site the outdoor arena away from the footpath, but it was where planning permission was obtained. That matters not as I must judge things as they are and the proximity of the path to horses appears to raise a legitimate concern.
20. Having suffered three break-ins and thwarted others over several years, the landowner has cause for concern over security to the premises. Such concerns are exacerbated by users having been found on numerous occasions at the stables which are located well away from the path. Whilst some people have been lost, the owner doubts if that was so in all cases. The natural inclination

upon reaching point A is to continue along the driveway which leads past the farmhouse towards the stables and other agricultural buildings. This may account for some walkers ending up at the stables. If so, the problem will not be addressed by diverting the path, but better waymarking could assist.

21. Nevertheless, I accept that the current alignment brings walkers close to buildings within the farm complex which could be used at any time not only by genuine walkers but also by those with improper motives. Diversion of the path would enable the farm, where equipment and machinery are kept, to be made more secure and to challenge anyone within the confines of the farm complex.
22. In addition, the owner described how the farm has suffered a loss of livestock (one per year over the past 5 years) which is considered most likely to have occurred in consequence of loose dogs whose owners have been using the existing path. That was known to be the case on one occasion.
23. The landowner submits that the current position of the path makes it virtually impossible to effectively and securely manage the landscape through which it passes. This was challenged by an interested party who pointed out that there are other public paths through the estate where livestock are grazed. The owners explained that there is no perimeter fencing unlike the other fields where grazing takes place. It seems to me that is a situation which would need to be addressed even if the path is diverted.
24. However, I accept that the cross-field location of the path limits the options available for the erection of fencing when the line must be kept open for public use. If the existing route was fenced on either side, then it would leave land to the west of the path unused. Enclosure of the path in such manner is also unlikely to be popular with walkers. By diverting the cross-field section of path to the field edges, it would allow grazing of all corners of the land along the southern half of the existing route with livestock securely contained.
25. In terms of privacy, security, improved land management and safe fulfilment of the owner's equestrian pursuits, I am satisfied that it is in the interests of the landowner for that part of FPA6 to be diverted.

Whether the new footpath will not be substantially less convenient to the public

26. The definitive line for FPA6 runs along the driveway to Abbey Farm before it veers off over grassland to enter the environs of the farm complex. It proceeds across the adjoining pasture and through a railway bridge tunnel to continue a considerable distance through fields to the south.
27. It is the section affecting the farm complex and adjoining field which is proposed for diversion stopping short of the railway tunnel. The proposal takes walkers off in another direction from the driveway to avoid the farmhouse and its associated buildings and runs along the field edges to reach the same point B. Thus, the termination points would be unchanged.
28. The section of FPA6 to be diverted measures approximately 503m. In comparison the diversion is 94m longer at 597m. As it would not take long to walk the additional distance this factor has minimal impact on convenience.
29. If travelling north and having emerged through the railway tunnel in the approach to Point B, the existing route proceeds straight ahead before curving

- gently as it approaches and passes through the farm. The diversion on the other hand has several changes in direction. They include 90 degree turns as the path leaves the driveway to navigate around the garden of Abbey Farm and once through the kissing gate at point C. Another sharp turn is needed to connect with the remainder of FPA6. Where the path changes direction behind the outdoor arena, it is in reality a gentle bend and the change in direction at point D simply passes from one side of the hedgerow to another. The path curves to lead over the southernmost sleeper bridge rather than any abrupt turn.
30. Objectors acknowledged that the path is principally used for recreational purposes. The need to reach a destination along the shortest and most direct route is likely to be less important for recreational users. Accordingly, the changes in direction would be less convenient, but not substantially so.
 31. FPA6 initially follows the hard-surfaced driveway of Abbey Farm for some distance. This section of path would be unchanged. Upon leaving the garden, the existing path leads across the fields in a southerly direction. The objectors consider the existing route provides a reasonable surface. Concerns are expressed over the proposed route where there has been thicket and other surface vegetation. Photographs are produced to illustrate the amount of overgrowth which would impede passage.
 32. As the OMA points out, the diverted route is not yet public highway and so its past condition is not its final state. It would predominantly be natural turf. The only works required in the OMA's submission are mowing the grass to provide a convenient surface for walkers and for vegetation to be cleared, the surface levelled, compacted and re-seeded, where necessary.
 33. By the time of my visit the diversion was open and available for public use, the route having been cleared. I noted the mainly grassed surface offered reasonable walking conditions despite spells of heavy rain. Some water run-off from the fields had pooled in a small area along the stretch between C-D which appeared to need attention. Otherwise, the surface was flatter, more even and better drained overall than the southern half of the existing route.
 34. Much of the existing route crosses ridge and furrow grassland formed by past cultivations. By its nature the land is rough, uneven and prone to water congregating in the furrows impacting upon walking conditions.
 35. Part of the proposed route from A-C similarly crosses ridge and furrow grassland. The trodden path does not quite correspond with that proposed. Walkers have clearly taken the most direct line rather than follow the higher ridge line intended which is better drained.
 36. The land behind the farmhouse does not fall away steeply, but there is a change in ground levels. According to the landowner, the land can become water-logged as levels fall. At the time of my visit it was slightly boggy in places, but not enough to make walking conditions difficult. I do not discount the possibility that it can become worse and effect the convenience of use depending on the time of year and weather conditions.
 37. A period of 28 days is allowed in the Order in which any works could be carried out before the new route takes effect. Provision is made within Article 1 of the Order for the existing route not to be stopped-up until such time as the local highway authority certifies the works required have been carried out to bring

the path into a fit condition for public use. The OMA gave assurances at the Hearing that outstanding works could be achieved within the period afforded.

38. Objectors fear that the area closest to the pond near point B could be damp and become an ongoing maintenance liability. The OMA and owners disagree. At the site visit there was some mud in this area following recent heavy rainfall. As this section of new path lies between two ditches the owners say that rather than becoming wet, the exact opposite will occur once the ditches are cleared. If those works are required to ensure the path is in a fit condition for public use, then the Order already makes suitable provision by the certification process.
39. Whilst I recognise objectors' concerns over ongoing maintenance of the grassed surface, the local highway authority will have a duty to maintain the diverted path to a width of 2m whatever its budget.
40. The owner says that most people choose to use the permissive path which has been made available rather than utilise the definitive line past the farmhouse. This may be because they find the new route more convenient as suggested. However, it is just as likely to be because the chained gate across the legal line and signage warning of loose dogs act as a deterrent. Therefore, comparisons in footfall are not helpful in assessing the effect on convenience.
41. In terms of accessibility, there is no material difference between the routes. Midway along the existing route there is a footbridge and field gates in two locations. In comparison, there are two sleeper bridges along the proposed route and one kissing gate. A swing gate which had been located at point D has since been removed now that stock proof fencing has been erected.
42. Where the existing route passes through the farm complex, it is difficult to navigate with no clear line to follow. Better waymarking is unlikely to alleviate the issue altogether given the topography, heavy natural surface, scattering of trees and few defining features to aid navigation. No such issue arises with the proposed route as it mostly follows the hedge line.
43. The current route crosses the middle of a field where agricultural vehicles and machinery will be in use. This could have safety implications for walkers, but the track linking the agricultural units to the fields also crosses the proposed path. It seems to me that both routes have potential for walkers to come into conflict with agricultural operations, so that the effect in this regard is neutral.
44. To sum up, the diversion would be less convenient in terms of additional distance to travel between the same points and changes in direction, but these factors would not have a major impact. Indeed, convenience would be improved in terms of offering a better walking surface along a clearly defined and navigable path. Overall, the new path will not be substantially less convenient to the public.

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

45. The existing path has apparently existed along its current alignment since being set out by the Commissioners in the Inclosure Award from the 1830's. One objector described having a sense of history by walking along the same path utilised by our forefathers. Despite its longevity, there is no evidence before me that the path holds any particular historical value.
46. At present there are close range views of the farmhouse. Parts of the building

are formed of stone from the previous derelict farmhouse, but it is a new build constructed around the late 1990s. It is not a listed building. There are spots along the proposed route from where the farmhouse can still be seen. Those views are more distant, but for those interested it allows the farmhouse to be seen in the context of the surrounding buildings forming the farm complex.

47. Even though the large pond beside the farmhouse has been dug and improved by the current owners, it is the views which it now offers which are appreciated by walkers. Those views cannot be seen from the proposed route. The new path passes by a smaller pond at the southern end, but it is shallow and cannot be described as an attractive feature.
48. An alternative route to the definitive line has been in use by the public for some years. The alternative path took a direct line from point C-D rather than follow the hedge line as shown on the Order map. Objectors may prefer the previous alignment as initially consulted upon, but it is not the one before me.
49. Stock proof fencing has already been erected between C-D and beyond for 75m or so². Some people may feel constricted by the fencing with hedgerow on the other side. For others they may welcome the clarity it brings over the line to follow and ability to observe livestock in the fields whilst being safely separated. That may be particularly so for dog walkers who need not fear their dog will stray into the adjoining fields.
50. The objectors confirmed that a sense of enclosure complained of had been between points B-D where there was overgrowth as illustrated in photographs. This stretch has now been cleared and is open on one side, except for a new section of fencing. The landowner gave assurances that there is no intention to enclose the remainder of the proposed path. Indeed, plans were announced for a programme of woodland planting between the proposed and existing paths south of point D. This would improve the environment for users of both paths and so does not sway in favour of the diversion.
51. Concerns arise that the local highway authority will not have the resources available to include the new route within its routine surface clearance programme or to monitor overhanging vegetation to ensure it is cut back by the landowner.
52. A path of 2m in width must be maintained at all times. Where the proposed path follows the hedge line between C-D, there could be risk of sideways growth impeding clear passage along the path to adversely affect enjoyment. The OMA has sought to address this by inserting provision in the Order to the effect that the centre line of this section of path shall be 3m from the nearest fixed point of the adjacent northern boundary. The OMA submits that will virtually eliminate the possibility of side growth as it would provide a 2m buffer zone between the hedge and path.
53. As a wide berth has been allowed on the ground where the path runs between hedgerow and fencing, walkers are unlikely to find their enjoyment impeded. Moreover, should the owner/occupier fail in the duty to keep the path clear of vegetation then the local highway authority has statutory powers to take action in default.
54. Whilst there is a trodden line for the existing route heading north from point B,

² Distance estimated by the occupier.

it does not follow the legal line which runs beside woodland. As such, there is little difference between this section of existing path and the proposed section which runs almost parallel. It is only once the existing path crosses the middle of the field that a sense of openness can truly be appreciated. With open countryside all about many people would enjoy the tranquillity and views on offer of grass and trees along with wildlife attracted to the long grasses.

55. Openness with fields on either side can be enjoyed along A-C of the proposed route although the views are not as expansive. The post and wire fencing between C-D does not prevent quite far reaching views across the fields to the west where livestock are grazed. The path is contained by hedgerow along the eastern side, but the views west cannot be experienced from the existing path.
56. The land conditions could impede enjoyment of the existing route to some extent where it crosses the garden and the ridge and furrow land if it becomes wet and difficult under foot. This is less likely to be an issue with the proposed route where the land drainage appears better.
57. Enjoyment is often subjective. From my observations a greater sense of openness can be enjoyed from the existing path and many people will enjoy the pond and its setting. On the other hand, whilst some walkers may have no reservations about walking so close to windows of the farmhouse and its garden, others will feel uncomfortable in doing so, especially if unsure of the alignment. For those walkers this section of the existing path will be a major drawback and the proposed path will be preferable.
58. There are different views available from the proposed path and whilst some walkers will dislike the enclosure from the fencing it does not obstruct the views to any material degree. Ultimately, each route offers a different experience. A section of the new route crosses a field where openness can still be enjoyed. That being so and when taking into account the route as whole, I consider that there will be no loss of enjoyment overall for most users once the required works are complete.

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

59. Both the land over which the existing route and proposed route pass is within the same ownership. There is no evidence 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.

Whether it is expedient to confirm the Order

60. 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 oral or written submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

Conclusion

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

Formal Decision

62. I confirm the Order subject to the following modifications:

In the Order schedule: Part 2

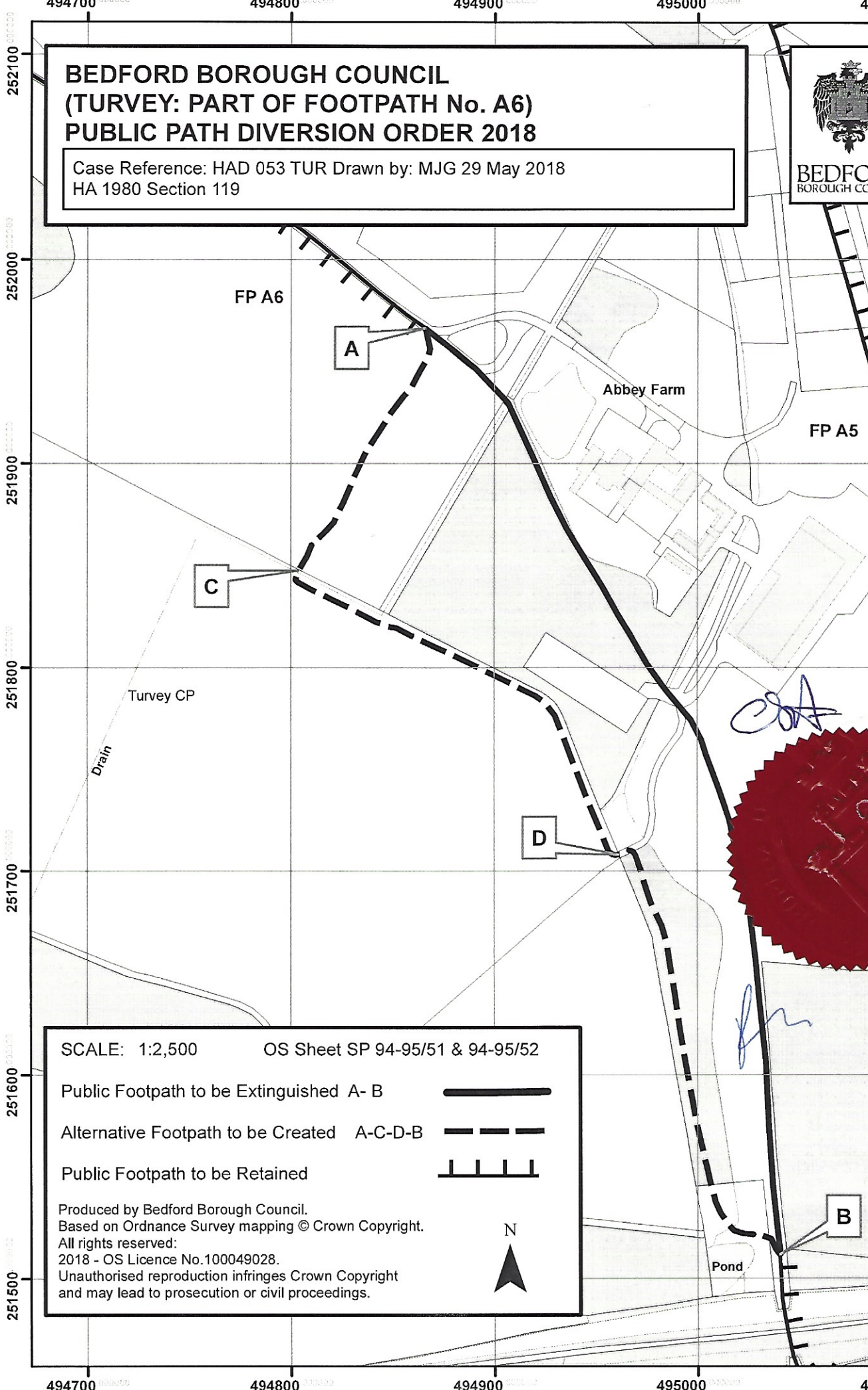
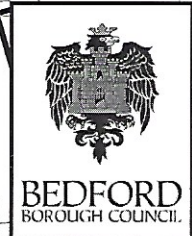
- Insert a new third paragraph to read "*At OSGR 9502/5152 the surface of the highway shall consist of a bridge.*"
- Insert a new fourth paragraph to read "The surface of the highway immediately south of Point C shall be supported by a structure to cross the watercourse".

KR Seward

INSPECTOR

BEDFORD BOROUGH COUNCIL (TURVEY: PART OF FOOTPATH No. A6) PUBLIC PATH DIVERSION ORDER 2018

Case Reference: HAD 053 TUR Drawn by: MJG 29 May 2018
HA 1980 Section 119



SCALE: 1:2,500 OS Sheet SP 94-95/51 & 94-95/52

Public Footpath to be Extinguished A- B 

Alternative Footpath to be Created A-C-D-B 

Public Footpath to be Retained 

Produced by Bedford Borough Council.
Based on Ordnance Survey mapping © Crown Copyright.
All rights reserved:
2018 - OS Licence No.100049028.
Unauthorised reproduction infringes Crown Copyright
and may lead to prosecution or civil proceedings.

