



Order Decision

Site visit on 23 July 2020

by Mark Yates BA(Hons) MIPROW

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

Decision date: 15 September 2020

Order Ref: ROW/3235867

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Bedford Borough Council (Podington: Part of Footpath Nos. 7 and 8) Public Path Diversion Order 2018.
- The Order was made by Bedford Borough Council ("the Council") on 12 December 2018 and proposes to divert two footpaths, which form one continuous route, as detailed in the Order Map and Schedule.
- There were two objections 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 proposed for confirmation subject to modifications set out below in the Formal Decision.

Procedural Matters

1. The two objections were submitted by Mr Gell of the Bedfordshire Rights of Way Association (BRWA) and Mr Clarke. Mr Gell has since given up his role and Mr Clarke has pursued the objections on behalf of BRWA and himself. Although the Council views BRWA as a defunct and spurious organisation, there are two objections outstanding to the Order. In reaching my decision, I have had regard to all of the representations made in response to the proposed diversion.
2. The Council refers to Mr Clarke introducing additional points in his statement of case to those included in his objection. Nonetheless, I consider that the proper course of action is to take into consideration all matters I view to be relevant. It would not be appropriate to disregard any valid point on the ground that it was not originally pursued by Mr Clarke. The other parties had an opportunity to comment on the points made by Mr Clarke in his statement of case.
3. Mr Clarke has provided an annotated map in support of his view that the proposed route in the Order deviates away from the field headland in four places where the samplings have been planted. This point is disputed by the applicant's¹ representative (Birketts). It is stated that they have taken care in planting the trees in relation to the proposed route using GPS co-ordinates. The Council adds that the landowner would have to remove any samplings which impinge on the route.
4. It was not possible for me to reach a definitive view on this matter from my observations of the site. I therefore had regard to this issue when looking at the relevant considerations below. If the Order is confirmed, the path on the ground will have to correspond to the route shown on the Order Map.

¹ The Bromborough Estate Company Limited

Main Issues

5. By virtue of Section 119 of the 1980 Act, for me to confirm the Order, I must be satisfied that:
 - (a) it is expedient, in the interests of the owner of the land crossed by the footpaths, that the paths should be diverted;
 - (b) the new paths will not be substantially less convenient to the public; and
 - (c) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the paths 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 paths and the land over which the new paths would be created together with any land held with them.
6. Regard should also be given to any material provision contained in a rights of way improvement plan ("ROWIP") for the area.

Reasons

Whether it is expedient, in the interests of the landowner, that the paths should be diverted

7. The case in support of the diversion predominantly relates to a desire for greater privacy and security for the occupiers of Hinwick Lodge Farm and to facilitate agricultural operations.
8. Reference has been made to the applicant's security concerns given that criminal offences have been committed in this locality and the rural location of the property. The extent (if any) to which these incidents were facilitated by the footpaths is not apparent from the submissions. Accordingly, I am unable to attribute much weight to this issue. I consider there to be greater merit in the privacy concerns given that the garden of the property is in full view of a section of path. Attention is drawn to an incident involving a person taking photographs of children playing in the garden of the property.
9. The existing route crosses two fields and a paddock and passes various agricultural buildings. In terms of the working areas of the farm, the applicant has safety concerns about the conflict between the public and vehicles. Additionally, they wish to increase biosecurity for the area where livestock are often kept. The applicant is particularly concerned about the risk to livestock posed by dogs.
10. The diversion of the footpath away from the working areas of the farm would clearly be beneficial for the landowner. This also applies to the land where livestock are kept. One of the two fields had crops planted during my visit, but I accept that use of the land may vary from year to year. The proposal to divert the footpaths where they cross the fields will be of significant benefit for the landowner. Given the extent of the land potentially involved, I find this to be the case even if Mr Clarke is correct regarding the alignment of the proposed route shown on the Order Map.
11. I find that it is clearly expedient, in the interests of the landowner, to divert the footpaths. In reaching this view, I have given particular weight to the privacy

concerns of the occupiers of Hinwick Lodge Farm and the agricultural use of land crossed by the paths.

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

12. In terms of Mr Clarke's interpretation of where sections of the proposed route are shown on the Order Map, there is nothing to indicate that this issue could potentially have a significant bearing on the convenience of the route.
13. The diversion would lead to an increase in distance to be walked of approximately 250 metres in comparison to the existing route. However, the location of the footpaths suggests that they are used by recreational walkers who would need to have walked some distance to reach this locality. Therefore, I do not view this to be a significant issue. Whilst the proposed route follows a more meandering course, this is tied in with the majority of it being closely aligned to a field headland. This section should offer an improved route to the cross-field path that presently exist.
14. A section of the proposed route follows a farm track and a short section of the access road to Hinwick Lodge Farm, which could lead to walkers encountering vehicles on occasions. However, these sections are wide and have good visibility. This issue also has to be compared with the use by farm vehicles and machinery over the section of the existing route in the locality of the farm.
15. The proposed route has a specified width of 2 metres, which would make adequate provision for a footpath in this location. It will also be free of any limitations and I noted that there are two gates in place on the existing route. Mr Clarke draws attention to the width of the track section of the proposed route and I note that the Order could create some uncertainty regarding where the 2 metres width is located. Further, Birketts assert that it is 3 metres wide and the whole width will be available for the public to use. I therefore consider it appropriate that, if confirmed, the Order is modified to specify a 3 metres width for a proportion of the route.
16. Birketts state it is intended that the proposed route will have suitable drainage and that this will be an improvement on the cross-field sections which can be muddy at times. I would also generally expect recreational walkers to wear appropriate clothing in light of the weather conditions on any given day. Therefore, I find there to be little merit in Mr Clarke's submission regarding the benefits of the existing route in comparison to the proposed route due to the prevalent wind direction in this country.
17. Overall, I find that the diversion would not lead to the footpaths being substantially less convenient for the public.

The effect that the diversion would have on public enjoyment

18. Different views have been expressed regarding the visual value of Hinwick Lodge Farm. I found it to be an attractive building and I accept that some people may enjoy looking at it when on the section of path that passes close to the house. The same cannot be said regarding the section to the east of the property which passes between various agricultural buildings. Additionally, there are people who could feel uncomfortable walking past the garden of the property and within close proximity of the agricultural buildings.

19. Mr Clarke draws attention to the woodland that lies further eastwards, which is relatively close to a section of the existing route. However, views of this woodland are evident from a section of the proposed route. Whilst it may take some time for the new woodland to become established near to the proposed route, this area stills offer a pleasant aspect when set against the section of the existing route that passes the agricultural buildings. Overall, both routes provide views of the surrounding landscape.
20. The Santa Pod Racing Circuit is located a short distance to the south of the proposed route. In normal circumstances there could be around 80 race days a year. The submissions of the parties reveal that race days generate a substantial amount of noise. Clearly, I have not had the opportunity to hear this noise from the different routes. However, given the location of the routes, I find there to be merit in the view that the noise is loud wherever a person is in this locality and this would be applicable to people on the existing and proposed routes.

The effect the coming into operation of the Order would have with respect to other land served by the existing paths and the land over which the new paths would be created

21. No relevant matters have been raised regarding these tests.

The consideration of the Order in light of any material provision contained in a ROWIP

22. There is nothing to suggest that the diversion is contrary to any material provision in the ROWIP.

Conclusions

23. I have concluded above that the proposed route will not be substantially less convenient than the existing route. In terms of whether it is expedient to confirm the Order, the relevant issues to be considered are the interests of the landowner and the impact of the diversion on public enjoyment.
24. The landowner would derive significant benefit from the diversion of the footpaths. In my view, the potential negative impacts on public enjoyment arising from the diversion are generally mitigated by other factors. When taking all of these matters into consideration I conclude that it would expedient to confirm the Order subject to modifications to the specified width where it is acknowledged that a 3 metres width will be available for the public to use. These modifications will affect land not originally included in the Order.

Overall Conclusion

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

Formal Decision

26. I propose to confirm the Order subject to the following modifications:
- Delete "*throughout*" in the final line of the description in Part 2 of the Order Schedule and insert "*between points A and X on the attached map and a width of 3.0 (three) metres between points X and B on the attached map*".

- Add "X" to the Order Map at the appropriate point.
27. Since the confirmed Order would affect land not affected by the Order as submitted I am required by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Mark Yates

Inspector

BEDFORD BOROUGH COUNCIL
(PODINGTON: PART OF FOOTPATH Nos. 7 AND 8)
PUBLIC PATH DIVERSION ORDER 2018

Case Reference: HAD 087 POD Drawn by: AQ 30 November 2018
 HA 1980 Section 119

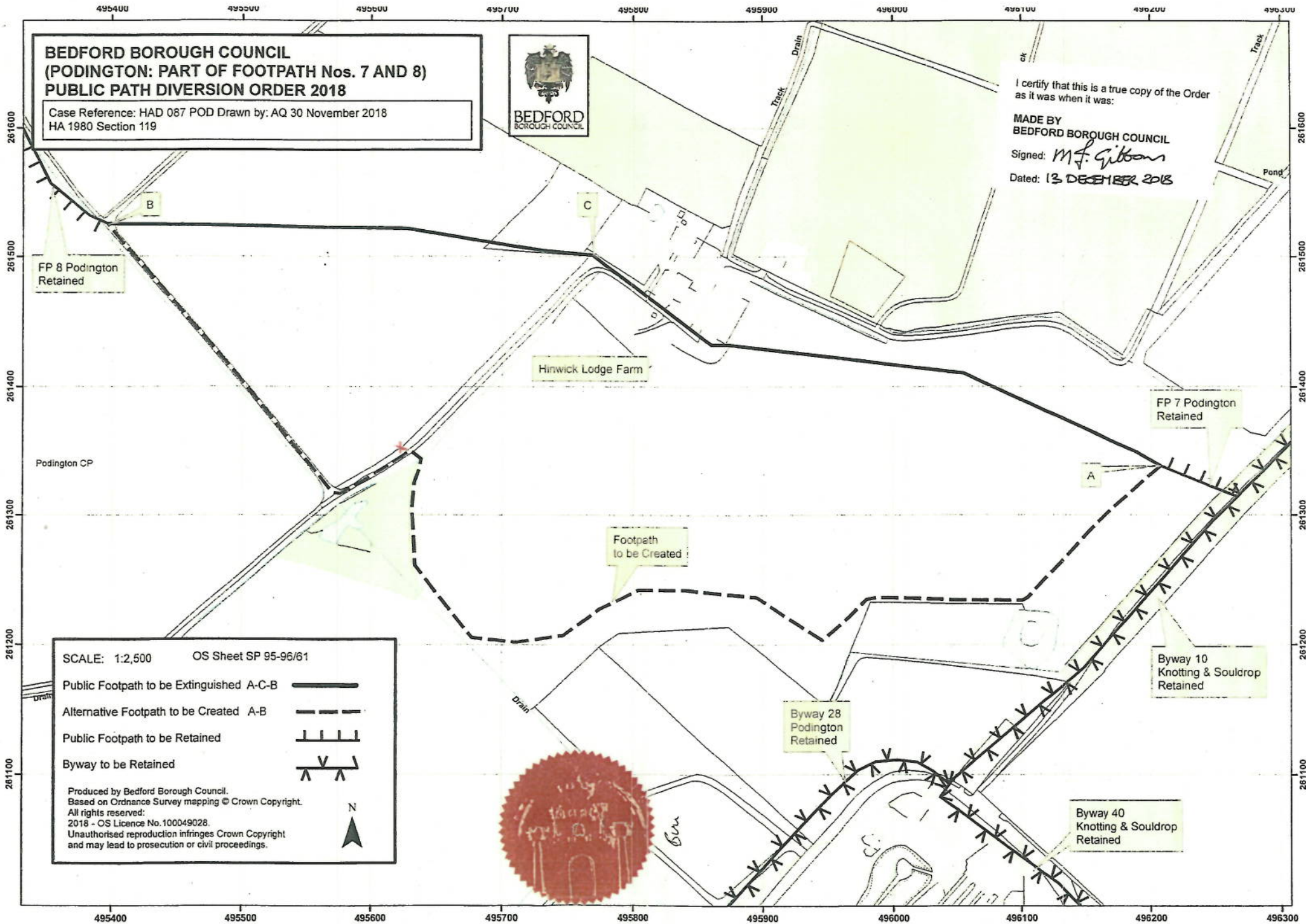


I certify that this is a true copy of the Order as it was when it was:

MADE BY
 BEDFORD BOROUGH COUNCIL

Signed: *M.F. Gibbons*

Dated: 13 DECEMBER 2018



SCALE: 1:2,500 OS Sheet SP 95-96/61

Public Footpath to be Extinguished A-C-B	
Alternative Footpath to be Created A-B	
Public Footpath to be Retained	
Byway to be Retained	

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