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| **Order Decision**  |
| Site visit made on 9 August 2022 |
| **by N Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 19 October 2022** |

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| **Order Ref: ROW/3268324**  |
| * This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act)) and is known as the Bedford Borough Council (Brickhill: Part of Footpath No. 27) Public Path Extinguishment Order 2020.
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| * The Order is dated 16 September 2020 and proposes to extinguish the public right of way shown on the Order Map and described in the Order Schedule.
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| * There was one valid objection outstanding when Bedford County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. No request has been made for an inquiry or hearing into the Order. In arriving at my decision, I have taken account of all written representations.
2. I undertook a site visit during the morning of Tuesday 9 August 2022 accompanied by representatives from the Council and the objector.
3. As I have found it convenient to refer to points annotated on the Order Map, I attach a copy for reference purposes.

**The Legal Framework**

1. Section 118(1) of the 1980 Act provides for a council to stop up a public footpath where it is expedient to do so on the ground that it is not needed for public use.
2. Section 118(2) provides that for an order to be confirmed the Secretary of State must be satisfied ‘that it is expedient to do so having regard to the extent (if any) to which it appears…………..that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in Section 28 and applied as section 121(2) below’.
3. Section 118(6) requires that ‘any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.’

**Main Issues**

1. Following the legislative framework set out above, if I am to confirm the Order I must be satisfied:
2. as to the extent to which it is likely the Order route would be used by the public if it were available for use, disregarding the present obstructions and impediments.
3. as to the effect confirming the Order will have on land served by the Order route,
4. that, having regard to my findings in (a) and (b) above, it is expedient to confirm the Order.
5. Further, in determining this Order I must give consideration to any material provisions in any Rights of Way Improvement Plan (ROWIP) for the area.

**Reasons**

*Background*

1. The Order relates to the proposed stopping up of a section of public footpath that has been obstructed and inaccessible to the public since the present housing estate was developed. I have not been provided with evidence of when the dwellings were constructed, but observation would suggest this may have been in the 1970s or 1980s.
2. The Order route is obstructed by the structures of three dwellings and otherwise passes through the gardens of these three, and two further dwellings. The route is also obstructed by various garden fences. In consequence use of the Order route has not been possible since these houses were constructed.
3. The Order route forms part of Footpath 27 Brickhill (FP27). This footpath has a western terminal point at its junction with Footpath 28. Footpath 28 is substantially accommodated within the footway to the public vehicular highway known as Avon Drive. From the junction with FP28, FP27 proceeds in an easterly direction, following the footway on the north side of Bourneside (also a public vehicular highway), to the point marked B on the Order map. From there it proceeds through houses and gardens in a north-easterly direction to its termination at the roundabout on the B660 (point A on the Order map). This Order seeks to stop up and extinguish the section of FP27 between A and B.
4. The Order has been made by the Council to resolve what it considers was an oversight at the time of the development in not stopping up or diverting the Order route using powers available under the Town and Country Planning Act 1990 or predecessor legislation. Those powers ceased to be available once the development was substantially complete.
5. An objection to confirmation of the Order has been made on behalf of the Open Spaces Society. The basis of the objection is that the Order route is needed, and if available, would be used by the public. The objector asserts that the north-western section of the Order route from Trent Road (at the point I have marked ‘C') to A has a clear purpose in providing a link between the housing estate and facilities in the vicinity. The specific destinations suggested are the Pheasant public house and Mowsbury Park, both of which are easily accessed from A.

*The extent to which the route would be used.*

1. In making this Order it was necessary for the Council to conclude that the Order route is not needed for public use. Given that the Order route has not been usable for many years, and the availability of a number of alternative routes, it was perhaps relatively straightforward for the Council to conclude that the route is not needed by the public.
2. My task is not to examine the question of need, but to assess the extent to which the route might be used by the public if the obstructions were not present, and the route were available for use. Although the legislation refers to temporary obstructions, the courts have interpreted this as including man-made structures which are capable of being removed. Accordingly I have to envisage a situation where the Order route is in a usable condition, but other context is unchanged. Thus the route would be a footpath through a housing estate linking A on the B660 to B on Bourneside, but with all other elements of the contemporary highway network in place.
3. It is not my task to investigate in detail the need for the path. However, when assessing the extent which the path, if available, might be used by the public, it is appropriate for me to have regard to the utility the route would provide, and how this utility is currently met.
4. I have no evidence about the utility of the path before the residential development of the area. It is a reasonable assumption that, whatever the purpose of the path then, circumstances have since changed significantly and that the current network of public rights of way now serves an urban community with new destinations and objectives.
5. Point A is located at a roundabout on the B660, which is a busy suburban road in a residential area. Point B is now a random location towards the eastern end of Bourneside, and a very short distance west of the junction with Trent Road.
6. A pedestrian wanting to travel between A and B currently has two obvious options; first using Lambourn Way, which is recorded on the List of Streets as a publicly maintainable highway, running from Avon Drive a short distance west of A, to Bourneside a very short distance west of B. Lambourn Way is a cul-de-sac vehicular route but with a public pedestrian right of way over the southern section. The second option uses the surfaced pathway passing over a plot of Council owned amenity land lying to the south of C. This pathway links Trent Road to the B660 a short distance south of A. It is not currently recorded as a public right of way.
7. Between them, these two routes cater for anyone wanting to walk from A to Bourneside and thence west, or to Trent Road and thence south. Given the availability of these alternatives I consider it unlikely that, if available, there would be any significant use of the Order route.

*Effect on land served by the Order route*

1. In the contemporary context, there is no land which can be identified as being served by the Order route. To the extent that any land could theoretically benefit, this would be the land adjoining the route, consisting of the affected dwelling houses and gardens. For these properties the extinguishment of the Order route would be entirely beneficial.

*Expediency of confirming the Order*

1. Having reached a conclusion about the extent to which the public would be likely to use the Order route, if it were available, I am then required to consider whether it is expedient for the Order to be confirmed. The ordinary definition of ‘expedient’ is ‘suitable and appropriate’*.* The requirement for expediency therefor permits me to bring into account other relevant factors to arrive at a balanced conclusion.
2. I cannot conclude that, if available, the Order route would not be used at all. It is however my finding that any such use would be very limited and that the route would not add any benefit to the network of public access in the vicinity. Accordingly the extinguishment of the route will not, in my judgement, be disadvantageous to the public.
3. The objector urges me to consider the Order route in two parts, broadly recognising section B to C has little or no utility and suggesting I confirm the Order only in respect of that section, thus retaining the section A – C. The rationale for this is that it would then be open to the Council to make an order for the diversion of A – C onto the currently used path across the Council owned amenity land.
4. The argument advanced by the objector does not rely upon a belief that the route A – C would attract public use, but rather that the retention of this section of FP27 on the definitive map would constitute some leverage for the Council to enshrine the status of the path across the amenity land. In my judgement this is not an appropriate consideration when assessing the expediency of confirming the Order.
5. There is no benefit to the public in a route which cannot be used being retained on the definitive map and statement. There is a benefit to the owners of the land crossed by the footpath in having it extinguished.
6. Having regard to all relevant factors, I conclude that it is expedient for the Order to be confirmed. In reaching this conclusion I have had regard to the findings I have outlined above, and I have given due weight to the issues raised in the written representations received.

*Rights of Way Improvement Plan*

1. There are no material provisions for me to consider.

**Other matters**

1. I have been provided with a statement of case from a party who did not submit an objection within the required period. I have treated this statement of case as comment from an interested party and have given due consideration to the points raised, which are twofold, and I deal with these in turn below.
2. First, he asserts that there is a need for the Order route and that if available it would attract use by the public. In this respect his objection mirrors that of the objection made on behalf of the Open Spaces Society, and I have made my findings on the substantive issues earlier in the decision.
3. Second, objection is made relating to the internal processes of the Council in making the Order. Where an order has been made under the relevant provisions of the 1980 Act, any alleged failure by the Council to comply with the procedural requirements of the application process is not a matter for me to consider.

**Conclusion**

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

**Formal Decision**

1. I confirm the Order.

Nigel Farthing

Inspector

