

|  |
| --- |
| **Order Decision** |
| Site visit made on 11 October 2022 |
| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 31 October 2022** |

|  |
| --- |
| **Order Ref: ROW/3281720** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Central Bedfordshire Council (Hulcote and Salford: Part of Footpath No 6) Public Path Diversion Order 2021.
 |
| * The Order is dated 5 February 2021 and proposes to divert the public right of way shown on the Order map and described in the Order schedule.
 |
| * There was one objection outstanding when Central Bedfordshire Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
 |
| **Summary of Decision: The Order is confirmed** |
|  |

Procedural Matters

1. I undertook an unaccompanied site inspection during the afternoon of Tuesday 11 October 2022.
2. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

The Main Issues

1. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which:-

(a) the diversion would have on public enjoyment of the path as a whole;

 (b) the coming into operation of the Order would have as respects other land served by the existing public right of way; and

(c) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.

1. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable. Regard must also be had to any material provision contained in a rights of way improvement plan (ROWIP) for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

Reasons

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

1. This diversion Order has been made pursuant to an application by the owner of the land over which both the existing and proposed routes pass. The principal basis for the application is that the existing route of Hulcote and Salford Footpath No. 6 (FP6) compromises the security of the applicant’s home, the curtilage of which adjoins the northern section of the footpath. A secondary reason for the application is to facilitate the management of the land traversed by FP6 for the grazing of horses.
2. The applicant’s home has been the subject of several burglaries, including a serious incident of aggravated armed burglary. Evidence has been produced to demonstrate that FP6 was used by the burglars to access the property. Security devices have been installed by the applicant, but their effectiveness is compromised by the proximity of the existing route of FP6 which can result in users of the path triggering the alarm.
3. The existing path is not fenced to the east, with the consequence that users, or accompanying dogs, may encounter grazing horses within the paddock through which the path runs.
4. The existing route runs along the western boundary of the broadly triangular paddock. The proposed route runs within the same parcel of land as the existing route but is set out along the eastern and northern margins. It would be fenced away from the paddock, thus removing any conflict between horses and the public.
5. I am satisfied that it is in the interests of the landowner that FP6 be diverted in accordance with the Order.

***Whether any new termination points are substantially as convenient to the public***

1. The termination points are shown on the Order map as points A and B. The termination points are unaffected by the proposed diversion.

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

1. It is necessary to consider whether, in terms of convenience, matters such as the length of the proposed path, the difficulty of walking it and its purpose will render the path substantially less convenient to the public.
2. The overall effect of the Order is to relocate the affected section of FP6 from the western margin of the parcel of land to the eastern and northern margins. The existing route has a length of 278m whilst the proposed route is 406m, an increase of 128m.
3. Both the existing and proposed routes are broadly level and have similar grass surfaces, save between points E and D where the proposed route runs between a hedge and ditch to the east and a narrow strip of trees to the west. This section of the proposed route has a bare earth surface which, on the day of my visit, was dry, firm and easy walking.
4. The existing route is limited by a stile north of the footbridge at point E. The proposed route will be subject to no obstructions or limitations.
5. The existing route has no recorded width. It is bounded to the west by a post and rail fence and for most of its length is open to the east. The proposed route would have a width of 2.5m other than between points B and D where the width would reduce to 2m. Between points A, C and D the proposed route is bounded on the outside by a substantial hedge and would be fenced on the internal boundary.
6. The objector suggests that the proposed route will be substantially less convenient because it is less direct and includes a right-angle turn. I recognise that the proposed route is longer by approximately 50%, but the additional distance of 128m is, in real terms, modest and, in my judgement, does not render it substantially less convenient to the public. Similarly I do not consider the fact that the proposed route is not the most direct route between points A and B to be material to the convenience of the public. I found that, when walking north from point B, the proposed route is a more natural continuation of the path than the existing route to the stile.
7. Having regard to these factors, I conclude that the Order route will not be substantially less convenient to the public.

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

18. The principal issue raised by the objector is a concern that the proposed route will be less enjoyable for the public. The issues raised include the proximity of the road to the section A–C, the presence of a heap of stable manure and waste material alongside the route, the loss of openness and the consequent sense of restrictiveness.

19. The proposed route between points A and C would run parallel to the Salford Road, but the road is screened by a substantial hedge. The hedge was in leaf when I carried out the site visit and for the most part passing vehicles, other than large commercial vehicles, were not easily seen. Traffic noise was audible, but this could also be heard from much of the existing route. Vehicles may well be more apparent in winter when the hedge is bare.

20. When I visited there were significant piles of waste material, stable manure and concrete slabs within the field adjacent to the section A – C. These can be seen from the existing route but are more obvious from the proposed route.

21. If this Order is confirmed the Applicant has stated that a fence will be erected between points A and C to separate the new path from the field and thus the piles of rubbish and other material will not be accessible from the path. This will result in an element of enclosure of the route, but the width of the path along this section will be 2.5m. Between points E and D the proposed route will be enclosed between hedges, offering a walk of a different character to the existing route. Between these points the hedge to the outside of the path is sparse in places, giving extensive views over an arable landscape.

22. I must assess what effect the diversion will have on public enjoyment of the route as a whole. The character of the existing route is open and without any significant features of interest other than those associated with the equine operation carried on in the paddock. The proximity of this operation gives a sense of intrusion. In contrast the proposed route has a more rural feel with variations of character and open views over the adjoining landscape. The walk alongside the hedge, and between hedges was a contrast to the open nature of the existing route. The removal of a stile is a positive factor in favour of the proposed route.

23. The proposed diversion will have no impact on other land. All of the land involved with the diversion is in the ownership of the Applicant and will not be adversely impacted.

***Rights of Way Improvement Plan***

24. There are no material provisions in the ROWIP that I need to consider.

***Conclusions on whether it is expedient to confirm the Order***

1. 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, both in relation to the landowner, in whose interest the Order is made, and in relation to public convenience and enjoyment of the route. I have given due weight to the issues raised by objector. In my judgement the factors supporting confirmation outweigh the matters raised by way of objection.

Overall Conclusion

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

Formal Decision

1. I confirm the Order.

Nigel Farthing

Inspector

