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| **Order Decision** |
| Site visit made on 6 March 2024 |
| **by Claire Tregembo** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
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| **Decision date: 27 March 2024** |

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| **Order Ref: ROW/3318247** |
| * This Order is made under Section 119 of the Highways Act 1980 and is known as the Bedford Borough Council (Carlton & Chellington: Part of Bridleway No. 12) Public Path Diversion Order 2022 |
| * The Order is dated 15 July 2022 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection and two representations from one person 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.** |
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**Preliminary Matters**

1. I will refer to various points shown on the Order map in my decision. For ease of reference, I have appended a copy of the Order map to the end of my decision.

**Procedural Matters**

1. The Order route is obstructed by a commercial building. There is no evidence that a diversion order under the Town and Country Planning Act 1990 (the 1990 Act) was made when the development occurred. An Order under the 1990 Act can no longer be made because the development is complete. In such circumstances, it is open to the local authority to consider any action to take to secure the diversion of a right of way by the exercise of such other powers that may be available. Bedford Borough Council (BBC) considers it is expedient to use the powers available under the Highways Act 1980 (the 1980 Act) to resolve the obstruction.
2. The objector considers the grid references given for points B and D to be incorrect. They also consider the description of the proposed route to be vague and possibly inaccurate. They believe there are more direction changes than included in the Order and additional points and distances should be included to reflect this. They believe approximate distances between points would have been safer and more realistic than the exact distances given. They consider the termination points should be described with reference to nearby features rather than just grid references, as done in other BBC orders.
3. BBC considers the grid references in the Order match the points shown on the map. I have checked all the grid references and have found errors with all given in the Order. Therefore, if I confirm the Order, I will need to correct the grid references.
4. The proposed bridleway between points C and D runs in a generally west-north-westerly then a westerly direction alongside a hedge. There are some slight bends along this section, but I do not consider them to be direction changes which need recording in the Order. Therefore, I also do not consider it necessary to include additional points or distances. Approximate distances are less accurate than the exact distances provided in the Order.
5. The points on the proposed bridleway are at boundary fences or hedges. At the time of my visit, the fence line north of Section C-D had fallen over at several points. When describing paths in orders, care should be taken to avoid referencing features which are not permanent, such as fencing and hedging. The Order refers to Turvey Road at point C. There are no features at points B and D which I consider sufficiently permanent to include in the Order.
6. The objector requested that points B, C, and D be pegged out on site to show the location of the proposed bridleway. I carried out an unaccompanied site visit and was able to identify the line of the bridleway and relevant points without them being marked on the ground. I do not consider it necessary for the proposed bridleway to be marked out for me to determine the Order.

**Main Issues**

1. Section 119(6) of the 1980 Act 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.
2. 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.
3. When comparing the existing bridleway to the proposed bridleway, I will disregard any circumstances preventing or diminishing use of the existing bridleway and apply the above tests as if the legally recorded line were open and available for use.

**Reasons**

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

1. The bridleway is obstructed by a commercial building and passes through a farmyard and residential garden. There is also a cattle barn adjoining the farmyard. The proposed diversion will move the bridleway out of these areas onto an alternative route through a field.
2. The proposed diversion will remove walkers, horse riders and cyclists from a working area improving farming practices and reducing health and safety concerns arising from the public having access to a working farmyard alongside cattle. The security and privacy of the farmyard, commercial building and residential garden will also be improved but the proposed diversion.
3. Reducing or eliminating the impact of rights of way in terms of the effect on privacy, security and safety are important considerations which should be given due weight when considering Orders.Therefore, I am satisfied that it is expedient to divert the bridleway in the interests of the landowners.

***Whether any new termination point is substantially as convenient to the public***

1. The eastern termination point of the bridleway will move approximately 60 metres southwest along Turvey Road. The western end is unaffected.
2. For those coming from the east, there will be a slight increase in roadside walking to reach the start of the bridleway; for those coming from the south, roadside walking will be reduced. However, the termination point will remain in the same wide roadside verge which can be walked or ridden along to reach the start of the bridleway.
3. The existing termination point is at the entrance to the farmyard alongside a cattle barn. There were several vehicles in this area at the time of my site visit. I consider the proposed termination point will be safer and more convenient for the public as they will not encounter manoeuvring vehicles or cattle confined in a small area.
4. I consider the new termination point to be substantially as convenient to the public.

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

1. The diversion will take the bridleway out of a working farmyard where agricultural vehicles manoeuvre, and livestock may be present. This will improve safety for members of the public on foot, horseback, and bicycle. The proposed bridleway will be through an open field. No livestock were present at the time of my site visit. However, if livestock were present, the more open nature of the field compared to the farmyard will be more convenient and is likely to be safer for the public.
2. The field sections of the existing and proposed bridleway have the same surface, ground conditions, and similar gradients. The proposed section D to B is slightly less steep than the existing bridleway just east of point B. The farmyard has a metalled surface. Many horse riders prefer natural surfaces and horses can find metalled surfaces too hard and slippery. There are no metalled sections on the proposed bridleway.
3. The proposed bridleway has a width of 4 metres which is sufficient for two riders to pass each other. There is no recorded width for the existing bridleway.
4. Two bridle gates are proposed at points C and D which meet current British Standard BS 5709:2018. The definitive statement records one field gate at the roadside on the existing bridleway. However, at the time of my site visit, there were two sets of field gates at either side of the farmyard, a field gate and stile into the garden and a bridle gate at point D. Most appear to be required for stock control so could be authorised by BBC. The proposed bridle gates are likely to be easier to use than the existing field gates and there will be fewer access controls required on the proposed bridleway.
5. The existing bridleway is a straight route. The proposed bridleway will have two direction changes at B and D making it slightly less direct. However, it is only 7 metres longer. I consider this to have a minimal effect on the convenience and enjoyment of the bridleway, given its use appears to be for recreational purposes.
6. Overall, I consider the proposed bridleway will not be substantially less convenient to the public than the existing bridleway.

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

1. The proposed diversion will take the Order route out of the farmyard and a residential garden. It will take the public away from farm traffic manoeuvring in a limited space and livestock enclosed in the farmyard. I consider there are likely to be path users who will not feel comfortable or safe passing through these areas. A route through an open field away from the farmyard is likely to be more enjoyable for the wider public.

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

1. The existing and proposed bridleway cross land in the ownership of the applicant for the public path diversion order. I have already found above that the diversion will allow more efficient use of the land for farming purposes and improve security and privacy. There is no evidence that the diversion will have a negative impact on the land served by the existing or proposed bridleway.

***Rights of Way Improvement Plan***

1. BBC considers there are no provisions in the ROWIP that are relevant to the proposed diversion. A copy of the ROWIP is not provided, but none of the parties raise any matters relating to it.

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

1. I consider the proposed diversion to be in the interests of the landowner. The proposed diversion will not be substantially less convenient to the public and the new termination point will be substantially as convenient. I consider the proposed diversion will not affect the public enjoyment of the path as a whole and some path users will find it more enjoyable. The proposed diversion will allow more efficient use of the land for agriculture and improve security and privacy for the farmyard, commercial building, and residential garden. I conclude that it is expedient to confirm the Order.

**Other Matters**

1. Reference is made to other routes in Bedford not being open and available for use, unrecorded routes, lack of maintenance, BBC’s tardiness in updating their online map and their failure to carry out their statutory duties. These matters do not relate to the Order before me, and I am unable to take them into consideration.
2. Concerns are raised about the charges to the applicant for making the Order. BBC’s charging policy for determining applications is not a matter before me and does not affect the legislative tests. However, I understand this matter has been raised with the Local Ombudsman and this complaint was dismissed.

**Overall Conclusion**

1. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to modification to correct the grid references. The modifications do not require advertising.

**Formal Decision**

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

In Part 1 of the Order

* Replace ‘SP 9942/5479’ with ‘SP 9443/5479’
* Replace ‘SP 9419/5481’ with ‘SP 9419/5482’

In Part 2 of the Order

* Replace ‘SP 9438/5475’ with ‘SP 9439/5475’
* Replace ‘SP 9419/5479’ with ‘SP 9420/5479’
* Replace ‘SP 9419/5481’ with ‘SP 9419/5482’

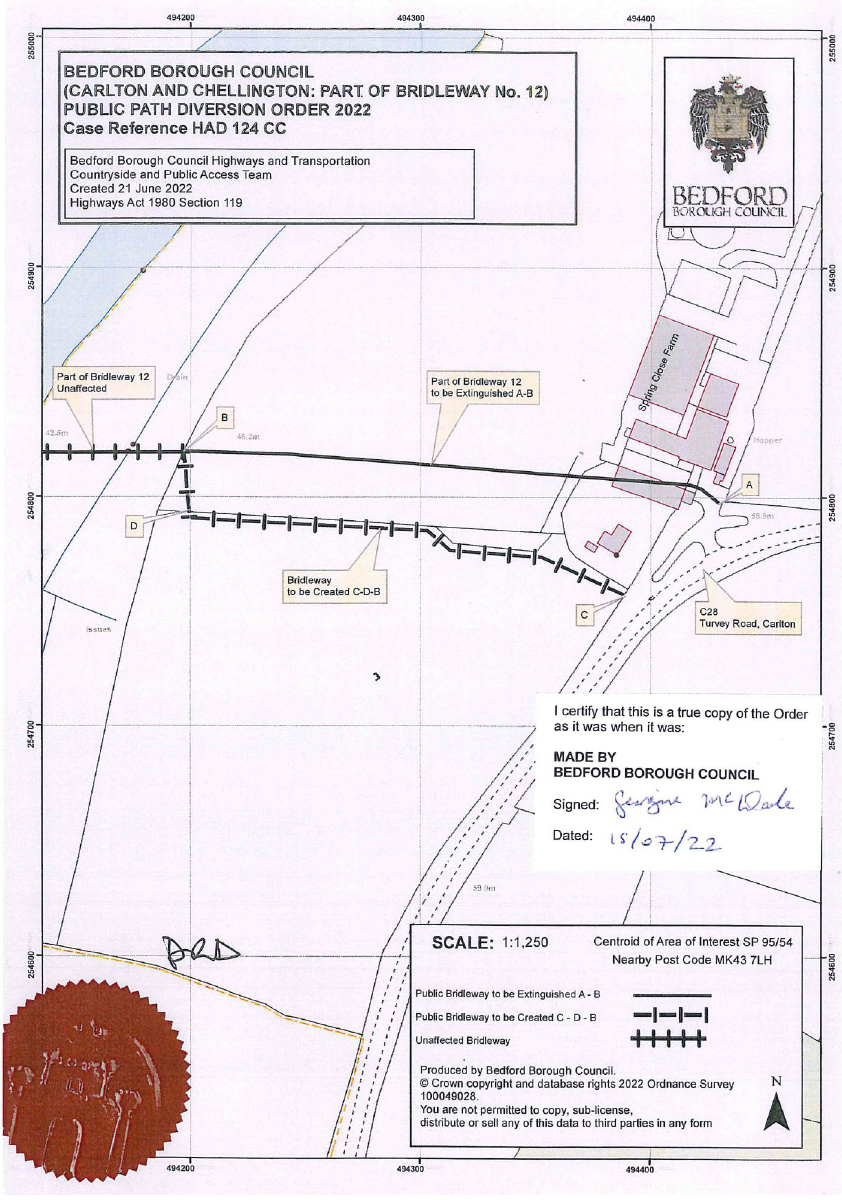
In Part 3 of the Order

* Replace ‘SP 9419/5479’ with ‘SP 9420/5479’
* Replace ‘SP 9438/5475’ with ‘SP 9439/5475’

*Claire Tregembo*

INSPECTOR

**Order Plan**

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