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| **Order Decision** |
| Site visit made on 18 August 2025 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 September 2025** |

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| **Order Ref: ROW/3339930** |
| * This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act). It is known as the Bedford Borough Council (Brickhill: Footpath No.9) Public Path Diversion Order 2023. |
| * The Order is dated 21 September 2023 and proposes to divert the full length of footpath no.9 Brickhill. Full details are shown on the Order plan and described in the Order Schedule. |
| * There were two 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.** |
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Preliminary Matters

1. I undertook an unaccompanied site inspection on 18 August 2025.
2. In this decision I will refer to the points on the Order route as shown on the Order plan. I have appended a copy of the Order plan to the end of my decision. Bedford Borough Council as the Order Making Authority (OMA) are supporting the Order.

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.
2. The government guidance on “diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises” was issued by Defra in August 2023. It is also known as the ‘presumptions guidance’. It states that I should weigh the interests of the owner against the overall impact of the proposal on the public as a whole. Reducing or eliminating the impact of the current route of the right of way on the owner, in terms of privacy, security and safety are important considerations to which due weight should be given.

Reasons

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

1. The diversion Order has been made in the interests of the owner of the land for security and privacy reasons. The existing footpath is partly obstructed as it runs through a residential dwelling and a garden. The dwelling and garden were constructed in the 1960’s over the definitive line of the public footpath. It is normal practice for Inspectors to ignore any obstructions on the route which is proposed to be diverted. Therefore, in considering the main issues in this case I have treated the existing route as if it is open and available for public use. For this part of the footpath, I consider that the diversion would significantly improve the security, privacy and quiet enjoyment of the garden for the landowner.
2. The remainder of the existing footpath runs through a wooded area and an open grassed area which is public open space. The footpath is partly obstructed with overgrown vegetation. Again, I will ignore these obstructions and consider the route as though it is available for use.
3. The existing route of footpath no.9 runs in a generally north north easterly direction from Falcon Avenue, point A on the Order plan. The footpath extends through the garden and property, then continues across a wooded area and an open grass area to Waveney Avenue, point B. The Order seeks to divert the footpath to an existing surfaced path, to the west of the existing alignment between points C-D on the Order plan.
4. I accept that it is expedient in the interests of the landowner for the path to be diverted. By diverting the footpath away from the dwelling and garden it would improve the landowner’s privacy. In addition, I find that the diversion of the remaining section of footpath, that is not affected by the dwelling, would also be in the interest of the landowner as it would be easier for them to maintain.

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

1. The Order does propose new termination points, the diverted footpath would, however, commence and terminate on the same highways as the existing alignment. I consider the new termination points to be a minimal distance from the existing points. Therefore, I consider they would be substantially as convenient to the public.

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

1. The existing route, for the majority of its length crosses the woodland and grass area, the surface therefore in some places is uneven and could be considered difficult to walk on. The surface of the proposed route would be a tarmac surface. I consider this firm and even surface to be an improvement to the surface of the existing route, particularly in the context of this urban path which is likely to be used by mobility scooters and by parents with pushchairs.
2. The existing route does not currently have a recorded width, which could give rise to uncertainty and potential detriment to passage. I consider that the proposed diversion would be an improvement in this regard, with a recorded width of 2 metres throughout, this would give greater clarity to the public.
3. The objector has raised concerns regarding the proposed width, due to the potential conflict between pedestrians and cyclists, they believe there should be an increased width. The route to be diverted is of public footpath status, there are no recorded rights for cyclists on the definitive map. However, the landowner may allow cyclists to use the route. I did not see any signage to that effect on my site visit, and I did not witness any use by cyclists. If there was occasional use by cyclists then I consider in this context a 2-metre width to be sufficient, particularly as the diverted footpath would be unfenced and would have public open space either side. In my view the proposed 2 metre recorded width would not make the diverted route substantially less convenient for the public.
4. Overall, having regard to all of these factors, I conclude that the Order route would not be substantially less convenient to the public, and in some respects would be more convenient.

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

1. The objector comments that by diverting users from the grassed area and woodland section and onto a shared tarmac path, this would have an adverse effect on their enjoyment of the path as a whole. I consider that although some users may enjoy walking the existing route, equally others may find the diversion route more enjoyable. From my site visit I consider that the proposed diversion is more enjoyable as it is easier to follow. In addition, some users would find the improved surface would increase their enjoyment of the path. The woodland and grassed area form part of the public open space and would therefore still be available to access. Consequently, I find that any impact on the public enjoyment of the path as a whole would be limited.
2. I recognise that some users of the footpath may not be comfortable walking through or immediately adjacent to the property and through a residential garden, they may feel like they are intruding in a private space. This could affect their enjoyment of the existing route.
3. Taking account of all the factors, I conclude that, on balance, public enjoyment of the route as a whole would not be significantly negatively affected by the diversion and may in some respects be enhanced.

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

1. There is no evidence that the diversion would have any negative impact on the land affected by either the new route or the existing route.

***Rights of Way Improvement Plan (ROWIP)***

1. The OMA state that the Order is compatible with the objectives of the ROWIP. Nothing has been raised by any other party. Consequently, I am satisfied that the Order is consistent with the objectives of the ROWIP.

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

1. I have concluded that it is expedient in the interests of the landowner to divert the path. The Defra guidance referred to at paragraph 5 above guides that I should weigh the interests of the owner against the overall impact on the public. The privacy issues, referred to at paragraphs 6 and 9 above, are important considerations. Diverting the route would reduce the impact significantly on the owner of the property.
2. The proposed new termination points would be substantially as convenient to the public. The diversion may have some limited adverse effect on the enjoyment of the route for some people; however, I consider that for the majority this would be minimal. The proposed route is likely to be more enjoyable to use for most people.
3. Having weighed up the competing interests, I am satisfied that it is expedient to confirm the Order.

**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.

**Formal Decision**

1. I confirm the Order.

*J Ingram*

INSPECTOR

