



Order Decision

by Edward Cousins BA, BL, LL.M, Barrister

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

Decision date: 15 December 2021

Order A: ROW/3252833

- This Order is made under section 26 of the Highways Act 1980 ('the 1980' Act') and is known as the Central Bedfordshire Council (Toddington: Part of Bridleway No 58) Public Path Creation Order 2019.
- The Order is dated 1 February 2019 and is made because it appears that, having regard to the matters set out in section 26(1) of the 1980 Act, there is need for a public bridleway over the land to which the order relates, and that it is expedient that the bridleway should be created. Full details of the route are shown on the Order Plan and described in the Order Schedule.
- There were two objections and one representation outstanding at the date when Central Bedfordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed

Order B: ROW/3252834

- This Order is made under section 118 of the 1980 Act and is known as the Central Bedfordshire Council (Toddington: Part of Bridleway No 58) Public Path Extinguishment Order 2019.
- The Order is dated 1 February 2019 and is made because it appears that, having regard to the matters set out in section 18 of the 1980 Act, the footpath shown on the Order Plan and described in the Order Schedule should be extinguished.
- There were two objections and one representation outstanding at the date when Central Bedfordshire 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. On 28 September 2021 I made an accompanied site view. This took into account the sections of the existing and proposed routes.
2. Order B relates to the extinguishment of part of the existing Footpath No 58. Order A adds proposes that an alternative parallel section of Bridleway be created. These will resolve the two long-standing anomalies in the local public rights of way network and correct the mismatched footpath-bridleway status of the route. It will also address the issue that Footpath No 58 runs through several back gardens of Bedford Road. As a consequence, an alternative pathway has been used by the public parallel to the legal route owing to its obstruction since the 1950s.

Main issues

3. Section 26 of the 1980 Act enables the local highway authority to make a Public Path Creation Order for the compulsory creation of a new footpath, bridleway, or restricted byway on the line indicated on the Order Plan where it appears to the local authority that there is such a need over land in their area, and that it is expedient to do so having regard to –
 - (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the path or way would have on the rights of persons interested in the land, account being taken of the provision as to compensation contained in Section 28 of the 1980 Act.
4. By virtue of section 118 of the 1980 Act, prior to confirmation of Order B I must be satisfied that it is expedient to stop up the path having regard to:
 - (a) the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public; and
 - (b) the effect that the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation.
5. Section 118(5) of the 1980 Act provides that where proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order (as is the case here) then in considering to what extent (if any) that path would be likely to be used by the public, regard may be had to the extent to which the creation order would provide an alternative path.
6. In both cases I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') prepared by any local highway authority whose area includes land over which the Orders relate.
7. The objections can be summarised as follows –
 - (1) There was no awareness of the presence of any public right of way across or near the Objectors' properties by means of waymarking, or otherwise, or that it was to be stopped up;
 - (2) There is no need for a new Bridleway, the expense of the proposal could be better spent elsewhere;
 - (3) The new Bridleway will invade privacy, be a threat to security and will encourage anti-social behaviour.

Reasons

Order A

Need and expediency

(a) Whether there is the need for a Bridleway

8. It is apparent from the Statement of Reasons submitted by the local authority in support of the confirmation of the Creation Order that it is necessary to resolve two long-standing anomalies in the public rights of network in the local area. These are:
 - (1) the fact that Footpath 58 passes through the back gardens of odd-numbered properties in Bradford Road (Nos. 15-19) and has done so since the mid-1950s when the Bradford Road estate was constructed;
 - (2) the fact that, even prior to the Estate being constructed, the path had different statuses at either end, namely a footpath for the western half and a bridleway for the eastern half, with a junction being at Crowbrush Farm. It was therefore considered that a new public right of way with a different status, namely a Bridleway rather than a footpath, was needed on a different alignment in order to resolve these two anomalies.
9. Toddington Footpath 58 commences at the junction of Bradford Way with the B5120 Dunstable Road and extends eastwards along the footway of Bradford Way and into and across Kimberwell Close at point A on the Order Plan. The footpath crosses the highway verge and enters the rear garden of No.5 Bradford Road. It then proceeds south-eastwards for approximately 75 metres through the rear gardens of Nos. 5, 7, 9, 11, 13 and 15 Bradford Road to point B on the Order Plan. From point B the footpath extends for approximately 18 metres in a north-easterly direction through the rear gardens of Nos. 15, 17 and 19 Bradford Road to point C before turning south-eastwards once again to enter the Toddington Parish Council's Recreation Ground, which comprises a large grass field. The footpath then extends south-eastwards for approximately 114 metres cutting across the corner of the recreation ground to connect with Toddington Bridleway No.48 at point D. The Bridleway then heads in a generally north-eastwards trajectory for approximately 390 metres to terminate at its junction with the B579 Luton Road.
10. The Order provides that the new section of Bridleway (Bridleway No.58) to be created would commence at its junction with Kimberwell Close at point E on the Order Plan and extend for approximately 58 metres along an alleyway, and then for approximately 17 metres over a grassed area to point F. From point F the Bridleway would extend for approximately 19 metres to point C on the Order plan, straddling the existing chain-link fence at the bottom of the gardens of Nos. 15 and 17 Bedford Road. From point C the new Bridleway would extend south-eastwards for approximately 108 metres alongside the boundary hedge at point G and then would continue in a north-easterly direction stepped out from the wall of Crowbrush Farm for approximately 25 metres, and then to connect into the existing (and unaffected) part of Bridleway No 58 at point D on the Order plan
11. In the circumstances, I am satisfied that there is a need for a new Bridleway.

(b) Expediency –

The extent to which the creation would add to the convenience/enjoyment to the public or convenience to residents

12. The Order would provide an unobstructed Bridleway for the benefit of the members of the public.
13. The proposed Order would allow consideration of the elimination of the line of the current route through the back gardens of a number of houses. Whilst objectors indicated that they were unaware of the existence of the footpath it was recorded on the published 1953 Draft Map, the 1963 Modified Draft Map, and the 1964 Definitive Map. It is still depicted on the 2014 Consolidated Definitive Map.
14. The depiction of a public right of way on the Definitive Map is conclusive evidence of its existence. However, the route has been obstructed for almost 70 years since the houses were constructed in the mid-1950s and was not a way marked as a public right of way at that time. The fact that there was a lack of awareness of the footpath does not mean that this public right of way does not exist. As a matter of law, the current position is that there is a public footpath delineated across rear gardens. Currently the garden fences obstruct the footpath, such obstruction is unlawful, and the route remains a blot on the legal title of some local residents. I am able to consider extinguishment of the footpath through private land where there is an alternative available, such as this proposed bridleway.
15. I am satisfied that the bridleway will add to the convenience or enjoyment of a section of the public, and to the convenience of persons resident in the area, by the creation of a new continuous Bridleway route.
16. The fact that the new Bridleway is unlikely to be heavily used by horse riders does not detract from the benefit that will be derived by walkers and cyclists.

The effect of its creation on the rights of persons interested in the land

17. The majority of the land the subject of the proposal Order is either owned by the OMA or by the Parish Council. No evidence has been adduced to suggest that there would be any adverse effects.

Conclusions on Order A

18. Taking account of the above matters in my judgment the benefits of the creation of the Bridleway are clear. I am satisfied that it is expedient to confirm the Order.

Order B

The extent to which the Footpath would be likely to be used

19. Section 118(5) of the 1980 Act provides for an extinguishment Order to be considered concurrently with an Order to create an alternative way. In this case the confirmation of Order A to create a public Bridleway as an alternative way to the existing route provides a useful means to address the conundrum raised by the two anomalies, to which reference has been made above. In this

context, in my judgment, the new Bridleway will be attractive to walkers, and cyclists and possibly horse riders.

20. From the comments in objection and representation to the Orders it appears that local residents were unaware of the recorded alignment of the Footpath. It seems that the existing route has not hitherto been utilised where it is currently obstructed.
21. Accordingly, with the creation of the new Bridleway, there would be no reason why the existing route would be likely to be used by the public. I am satisfied, therefore, that it would be expedient for sections of the existing pathway to be extinguished.

The effect on land served by the Footpath

22. As noted above the footpath is legally recorded as running through the gardens of certain properties on Bradford Road. Whilst the residents may not have appreciated this fact on purchase the continuation of recording of the route in this location could lead to enforcement to remove obstructions – the garden fences – and to allow public access to the footpath. I consider it clearly in the interests of the landowners to remove the legal line of the footpath from their properties. This resolves the potential for enforcement action and allows unencumbered use and sale of the properties in question.

Conclusions on Order B

23. With the confirmation of Order A, creating a new Bridleway along the route specified in the Order Plan referred to in Order A, it is expedient that the footpath shown on the Order Plan and described in the Order Schedule should be extinguished. Order B therefore should also be confirmed.

The Rights of Way Improvement Plan (ROWIP)

24. Instead of a ROWIP, the OMA has published an Outdoor Access Improvement Plan (OAIP). In the Chapter on Connecting Spaces, seeks to improve bridleway connectivity, connect open spaces, legally recognised cycle routes and provide routes that can be utilised as part of healthy living and as access to open spaces. The OMA has stated that the proposed creation of the new Bridleway fulfils these criteria and is considered to be expedient in the circumstances.

Formal Decisions

25. I have confirmed Order A.
26. I have confirmed Order B.

Edward Cousins
Inspector

