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## Order Decision

Inquiry held on 11 June 2014

Site visit made on 11 June 2014

**by Martin Elliott BSc FIPROW**

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

Decision date: 1 July 2014

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### Order Ref: FPS/P0240/3/5

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Central Bedfordshire Council (Maulden: Footpath No 28) Public Path Extinguishment Order 2013.
- The Order is dated 17 May 2013 and proposes to extinguish footpath 28 Maulden as shown on the Order plan and described in the Order Schedule.
- There were seven objections outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

1. I held a public local inquiry on 11 June 2014 at Beadlow Manor Country Club. I carried out an unaccompanied inspection of the Order route, bridleway 24 and the surrounding area on the afternoon of 10 June. An accompanied site visit took place on 11 June following the close of the inquiry.
2. At the commencement of the inquiry the Council submitted additional documents (inquiry documents 1 to 4). Whilst elements of one document provided updates on certain matters not relevant to my determination the documents were otherwise relevant. An adjournment was provided to allow parties to consider the content of the documents and there is no evidence of any prejudice.
3. Mr Bowers asked if there was anyone recording the proceedings and in the absence of any record being taken asked if he could record the proceedings. None of the parties had any objections to the recording of the proceedings although Mr Westley asked if Mr Bowers was aware of his obligations, in particular, in respect of the Data Protection Act 1998. Mr Bowers indicated that any recording would be for his personal use. In the circumstances I permitted Mr Bowers to record the proceedings.
4. At the inquiry Mr Bowers made an application for the inquiry to be set aside. Mr Bowers made representations in relation to the unresolved matter of an application to delete the Order route under section 53 of the Wildlife and Countryside Act 1981 (the 1981 Act) and the decision making process of the Council in respect of the Order before me.
5. Whilst I note the submissions of Mr Bowers the Order route is recorded on the definitive map and statement which provides conclusive evidence as to the existence of a public footpath. An Order has been made under section 118 of

the 1980 Act to which objections have been raised. As a consequence the Council has referred the Order to the Secretary of State for determination. I have been appointed to determine the Order. The matters relating to the 1981 Act and the actions of the Council, and the former Bedfordshire County Council, are not relevant to my consideration. The relevant considerations are identified at paragraphs 7 to 9 below. There was nothing before me which suggested that the inquiry should not proceed and on that basis continued the inquiry.

6. The Council suggested that I might wish to defer any post inquiry site visit until the proposed refuges had been constructed. I did not consider this necessary. The locations of the refuges are clear on the ground, particularly having been marked out, and it was in my view possible to make an assessment as to the benefits of the refuges. I consider the provision of refuges further at paragraphs 24 to 26.

### Main Issues

7. The Order is made under Section 118 of the Highways Act 1980. This requires that, before confirming the Order, I must be satisfied it is expedient to stop up the footpath having regard to the extent that it appears that the path or way would, apart from the Order, be likely to be used by the public. I must also have regard to the effect which the extinguishment of the right of way would have as respects the land served by the path or way, account being taken of the provisions as to compensation.
8. I must also take into account any material provision of a rights of way improvement plan prepared by any local authority whose area includes land over which the order would extinguish a public right of way.
9. I was referred to the cases of *R v SSE ex parte Stewart (1980) 39 P&CR 534 (Stewart)* and *R v SSE ex parte Cheshire [1991] JPL 537* which are relevant in respect of the tests to be applied in confirming the Order. At the confirmation stage it is necessary to consider whether confirmation is expedient having regard to the likely use of the way. The use of the word expedient means that other factors may be taken into account. However, *Stewart* clarifies that the prime consideration is that of user by the public. Both *Stewart* and *Ramblers Association v SSEFRA [2012] EWHC 3333* provide clarification as to the use of the word expedient in the 1980 Act.

### Reasons

#### ***The extent to which it appears that the path would, apart from the Order, be likely to be used by the public***

10. The Council had monitored use of the Order route for a period of 363 days between 10 September 2010 and 20 September 2011. The monitoring recorded a total of 3540 trigger events equating to an average of 9.8 journeys per day. The Council suggested that this could represent as few as 5 people making return journeys a day or even fewer dog walkers making more than one return journey in one day. However, the monitoring only records trigger events and no conclusions can be reached as to whether the use relates to a limited number of individuals. It can only be concluded that the route was used during the survey period on average 9.8 times a day and it the likely use that needs to be considered.

11. Correspondence from a Mr Tebbutt, a resident of one of the properties to the northern end of the Order route indicates that some of the use during the monitoring period would have been by his children using the path morning and evening. From the evidence before me it cannot be concluded that this use was necessarily throughout the monitoring period or that a proportion of the use was all by his children or friends; the correspondence suggests that on occasions the children used bridleway 24. I do not accept that this evidence suggests that a relatively high proportion of the use would be by the members of one family.
12. I note the fact that in considering an extinguishment order in 2001<sup>1</sup> Inspector Bourne draws on the finding by the Inspector who determined the 1995 definitive map modification order<sup>2</sup> that many of the path users had been using the footpath as of right prior to its obstruction. However, the monitoring survey provides the most recent evidence as to the use of the way.
13. In my view the monitoring does not suggest that the way is used to any great extent by the public but it does show continued and regular use of the way; the levels of use are not insignificant. There is no evidence to suggest that use has increased since the monitoring or that the route is likely to be used more in the future. However, the route continues to be used as evidenced by a defined trodden surface along the path which is consistent with regular use of the way. Whilst new residential development in the area might provide a source of potential users there is nothing to indicate that further development will take place or that this will result in any significant changes in the levels of use. I note the point made by the Council that there is no groundswell of local opinion which suggests that there is no significant demand to use the path. Further, I note that those appearing at the inquiry in opposition to the Order indicated limited use of the way by them and only one objection has been received from a local resident.
14. Having regard to the above footpath 28 would, apart from the Order, continue to be used. Although the use is not substantial it is not insignificant.

***The effects which the extinguishment would have as respects land served by the path, account being taken of the provisions as to compensation***

15. There is no evidence that the Order route provides access to land such that there would be any adverse effects in the event that the Order is confirmed.

***Rights of Way Improvement Plan***

16. The Council did not rely on any material provision within any rights of way improvement plan in support of the Order and I was not referred by any other party to any relevant provision.

***Whether it is expedient to stop up the footpath in question***

17. In opposition it was contended that the alternative route to footpath 28, namely bridleway 24 was not a suitable alternative. My attention was drawn to the findings of other Inspectors in relation to the determination of previous

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<sup>1</sup> An order made under section 118 of the 1980 Act in 2000.

<sup>2</sup> In 1995 the former County Council made an order to add footpath 28 to the definitive map and statement, the Order was confirmed in 1997 following determination by way of written representations.

orders<sup>3</sup> but my determination must be based on the current circumstances. Concerns were raised as to the fact that, whilst the Order route was only available to pedestrians, the alternative route would have to be shared with horse riders, cyclists and vehicular traffic. Use of the bridleway would also require the crossing of Clophill Road in very close proximity to a three way road junction. However, crossing the road to access the Order route would only require the crossing of a two way road; there being no footway on the north side of Clophill Road. It was also pointed out that despite improvements to the drainage the bridleway was still subject to flash flooding. It is also said that the Order route provides a pleasant and direct link to Maulden Woods and the wider rights of way network including the Greensand Ridge Walk.

18. The Council argued that it was expedient that the footpath should be extinguished on the basis that the existing footpath raised privacy and security concerns for the two adjacent properties. There was an alternative route, bridleway 24, and there were no objections based on amenity grounds. The contrary factors related to conflict, safety and flooding. In terms of the additional length required in using the alternative route this was not considered to be a significant disadvantage. The Council contended that when the contrary factors were taken into account it remained expedient to confirm the Order.
19. Although the evidence identified by the Council makes reference to security issues there is nothing to suggest that the existence of the footpath is facilitating crime or presents any significant security issues. In terms of privacy the initial section of footpath leading from Clophill Road is enclosed by 2 metre high fencing and views into the adjacent properties are limited. Whilst the path opens up and offers views of the adjacent land I do not consider that any effects on privacy are significant.
20. I accept the evidence that the Order is expedient on privacy and security grounds was not challenged and I acknowledge that the adjacent landowners will have such grounds for concern. The effect on privacy and security must be put into the balance when considering whether or not it is expedient to confirm the Order.
21. In terms of highway safety issues, Dr Hollowell submitted that the Order route terminates directly on Clophill Road alongside a hedge which can obscure vision, whereas there were no safety implications in respect of bridleway 24. However, the Council's Senior Traffic and Safety Engineer has looked at the approaches to the junctions of the bridleway and footpath with Clophill Road and the utilisation of the southern footway to the dropped kerb near to the three way road junction. The engineer concluded that the current and alternative routes along/across Clophill Road have a similar low level of risk.
22. Whilst I note the concerns in relation to the three way road junction, and I accept crossing the road at this point will require greater vigilance, some weight should be given to the view of the Senior Traffic and Safety Engineer. There is nothing before me to indicate a significant safety issue in this area bearing in mind that the bridleway will be currently used by the public and there is no evidence of any incidents which might suggest that access is unsafe.

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<sup>3</sup> An order made in 1995 by the former Mid-Bedfordshire District Council under section 257 of the Town and Country Planning Act 1990 and the 2000 order (see footnote 1).

23. I note the point that the Order route provides a traffic free route whereas bridleway 24 provides vehicular access to two dwellings and will therefore be subject to vehicular traffic. I accept that some walkers may prefer to use the footpath but the vehicular use of the route by the owners/occupiers, visitors and others gaining access to the premises on bridleway 24 is likely to be low. However, the route is not wide and there are limited opportunities for pedestrians and other users to pass vehicles using the route. I note the point made by Mr Westley that where public rights pre-exist any private vehicular rights then the public rights take precedent. However, even if I am minded to confirm the Order, which will result in an increased use of the way by pedestrians, there is nothing to indicate that the private vehicular use of the way will be to such an extent to create a nuisance for those exercising public rights.
24. The Council intend to install two pedestrian refuges and improve an existing refuge to enable vehicles using the route to pass other users more easily. Mr Westley made the point, by reference to *Hertfordshire CC v SEEFRA [2006] EWCA Civ 1718* that a vague promise to carry out minor works on an existing right of way should be ignored. He nevertheless accepted that the works had been ordered and that these would take place regardless of the Order. As pointed out by the Council, by reference to the same case, it is possible to take account of future events with the appropriate weight given depending on the likelihood. The Council have raised an order for the works which are specified on a plan (inquiry documents 3 and 4), and these works are due to take place regardless of the Order.
25. In the circumstances it is appropriate to have regard to the works to provide refuges. At the inquiry there was some discussion regarding who would pay for the works and whether the costs should be placed into the balance in terms of expediency. Given that the works will be carried out regardless of whether or not the Order is confirmed the costs do not have any bearing on the determination of the Order. The issue as to any contributions by the applicant is not a matter for my consideration.
26. The refuges will provide an opportunity for pedestrians and other users to pass vehicles using the bridleway. However, there is a significant proportion of the northern part of the route where there are limited opportunities for vehicles to pass users. The verge to one side is narrow and to the other side there is in part an open ditch. This may present difficulties should walkers encounter vehicles on the route but given the likely use of the way by vehicles this is not likely to be a frequent occurrence. In addition, whilst the refuges will provide a haven for pedestrians, whilst vehicles pass along the bridleway, the visibility along the southern section is limited. Given the likely use by vehicles I consider that this limited visibility presents a low level risk in terms of the safety of the users. I do not accept that the refuges will make the route less suitable for walkers or other path users, their presence can only be of benefit along this section of bridleway 24.
27. Although there are concerns regarding conflicts between equestrians, cyclists and pedestrians no evidence has been provided which suggests that there are any problems on the route arising from the current use of the route. The prospect of conflict is in my view limited.

28. As regards the flooding of the alternative route, since the 2000 order two sections of the adjacent ditch have been piped which has lessened the risk. The Council nevertheless accept that these works have not fully alleviated the risk of minor flash flooding following extreme weather conditions. In my view any flash flooding is likely to be infrequent and temporary. In contrast there is no evidence before me to suggest that the Order route is prone to flooding or would become impassable in extreme weather conditions. It may be that those using the Order route in such conditions may get wet but this is in consequence of the presence of vegetation which the Council accepted there was an obligation to clear. Given that flash flooding is likely to be infrequent and temporary I consider any disbenefits in respect of the alternative route to be minimal.
29. I was made aware of flooding on Clophill Road in consequence of blocked drains but there is no evidence that this impacts on the use of bridleway 24.
30. In respect of the Order route providing a pleasant and direct link to Maulden Woods and the wider rights of way network, the path at its southern end is enclosed by fences and the gable end wall of 123b Clophill Road. The northern end, whilst still enclosed provides views, of the surrounding countryside. Whilst some may find the route pleasant I do not consider that loss in terms of physical enjoyment of the way would be significant. The alternative route provides a similar experience to that provided by the Order route although it is accepted that some may prefer to use a traffic free route with exclusive rights for pedestrians. I note Mr Cowling's reference to the sales particulars for 123b Clophill Road which refer to numerous beautiful walks and nature trails locally. However, there is no indication that this specifically relates to the Order route and I do not consider that the sales particulars add weight to the non-confirmation of the Order.
31. I accept that the Order route provides direct access to Maulden Woods and the wider rights of way network and it is likely that those using the Order route will come from the east. The confirmation of the Order will increase the distance in accessing Maulden Woods and rights of way in the area but this will not be a significant increase.
32. Although not referred to in closing, Dr Hollowell considered that the confirmation of the Order would be expedient as it will resolve a long standing issue which had been a drain on Council finances and manpower for many years. I am aware of the long history relating to the Order route but the power to make orders under section 118 of the 1980 Act is discretionary. Whilst there are ongoing matters pursuant to section 53 of the 1981 Act, the continuous review of the definitive map is a duty of the surveying authority. Bearing this in mind, although confirmation of the Order may resolve long standing issues, I do not consider that this adds weight to the confirmation of the Order.
33. Having regard to all of the above, the path apart from the Order will continue to be used. Whilst there are benefits to the adjacent occupiers in terms of privacy and security I do not consider that these benefits will be particularly great. Although bridleway 24 provides an alternative route there are certain disbenefits which, whilst not significant, must be put into the balance when considering the Order. I note the correspondence from the Open Spaces Society (inquiry document 8) which states that bridleway 24 is '*already*

*perfectly suitable for public use*'. However, whilst the route may be suitable for public use I need to consider the disadvantages in the context of the way providing a suitable alternative to the Order route. As noted above, although there are disadvantages with bridleway 24 being used as the alternative route.

34. Taking all factors into account, having regard to the prime consideration being public user, although the issue is very finely balanced, I do not consider that it is expedient to confirm the Order.

### **Conclusions**

35. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

36. The Order is not confirmed.

*Martin Elliott*

Inspector

## APPEARANCES

### Central Bedfordshire Council:

Mr C Ormondroyd	Of Counsel, instructed by Central Bedfordshire Council
who called	
Dr S Hollowell	Definitive Map and Rights of Way Consultant

### The Applicant:

Mr A Bowers

### In support of the Order:

Cllr P Duckett	Councillor for Central Bedfordshire Council
Cllr K Matthews	Councillor for Central Bedfordshire Council

### In opposition to the Order:

Mr M Clarke	Bedfordshire Rights of Way Association
Mr B Cowling	On own behalf and for the Open Spaces Society
Mr M Westley	East Herts Footpath Society

## DOCUMENTS

- 1 Updates and Corrections submitted by Central Bedfordshire Council
- 2 Extract from Encyclopaedia of Highway Law and Practice April 2007 p. [2]-10279
- 3 Plan showing proposed improvement works to Maulden bridleway No. 24
- 4 Purchase Order for works on Maulden bridleway No. 24
- 5 Statement of Mr A Bowers
- 6 Opening Statement on behalf of Central Bedfordshire Council
- 7 Summary of Statement of Case of Mr B Cowling
- 8 Correspondence from the Open Spaces Society 15 April 2003
- 9 Closing submissions of Mr B Cowling