

## **BEDFORD BOROUGH COUNCIL – REPORT TO THE ASSISTANT DIRECTOR (HIGHWAYS)**

**SUBJECT:** Proposed diversion of part of Public Footpath No.5 Stonely (Cambridgeshire) and Public Footpath 19 Pertenhall, and the proposed creation of a new section of public footpath in Little Staughton.

### **1 EXECUTIVE SUMMARY**

- 1.1 In January 2015 we were contacted by Mrs Peck of College Farm, Stonely near Kimbolton, about a potential diversion on her land and that of her neighbour, Mr Paul Sheard. The paths which were potentially to be diverted are partly in Cambridgeshire and partly in Bedfordshire.
- 1.2 In May 2015 I met with Mrs Peck, Mr Sheard and my opposite number from Cambridgeshire County Council on site to discuss the proposal. As part of the application to divert FPs 5 Stonely and 19 Pertenhall Mr Sheard agreed to the creation of a new public footpath on his land shown as section K-L on the plan at appendix 1.
- 1.3 Section K-L is in the parish of Little Staughton, and constitutes a long-standing anomaly on the definitive map. Footpath 19 Pertenhall is depicted on the definitive map as a dead-end path stopping at the southern boundary of Pertenhall parish (point K on the plan at appendix 1). This proposal, therefore, constitutes a significant opportunity to plug this gap in the public rights of way network.
- 1.4 It was agreed at the site meeting in May 2015 that Mrs Peck would apply to Bedford Borough Council on behalf of both landowners and that, with the agreement of Cambridgeshire County Council, this authority would process the application as it relates to both counties.
- 1.5 A condition stressed by Mr Sheard in these discussions was that whilst he was happy to allow the creation of the missing section of path on his land in the context of the overall proposal, he was not prepared to do so without the diversion also taking effect. I advised Mr Sheard that it was very difficult to guarantee that the creation would only take effect upon the confirmation of the diversion order. In the end it was agreed that in order to meet Mr Sheard's requirements, we would, firstly, only make the creation order if and when we also made the diversion order. Secondly, Mr Sheard would lodge a formal objection to the creation order so that it could not be confirmed as an unopposed order without his agreement. Then, if and when we are able to confirm the diversion order Mr Sheard has agreed that he will withdraw his objection so that we may then confirm the creation order. If the diversion order is not confirmed, then Mr Sheard will retain his objection and the creation order will be abandoned.

## **2 RECOMMENDATIONS**

- 2.1 It is recommended that an order be made under s.119 of the Highways Act 1980 to divert part of Footpath 5 Stonely and Footpath 19 Pertenhall from the route A-B-C-D to a new route A-E-M-F-G-H-C-I-J-D on the plan at appendix 1. The new route is to have a width of 3 metres between points A and G, and between H and D. Between points G and H the new route will have a width of 2.5 metres. It is further recommended that an order be made under the terms of s.26 of the Highways Act 1980 to create a new public footpath, to be known as Public Footpath No. 27 Little Staughton, between points K and L on the plan at appendix 1. This footpath will have a width of 3 metres.
- 2.2 We have consent from Kimbolton Parish Council and Cambridgeshire County Council to make an order under s.119 Highways Act 1980 to affect land in their area. We are still waiting on such consent from Huntingdonshire District Council.

**NB. No order affecting Footpath No. 5 Stonely will be made until and unless we receive formal consent from Huntingdonshire District Council.**

## **3. REASONS FOR RECOMMENDATIONS**

### The diversion order

- 3.1 The diversion order is to be made in the interests of the landowners. In the applicant's own words, the proposed diversion is in the interests of the landowners because:

*“Modern farm equipment is large, heavy and travels at high speed, therefore, a risk assessment is required before any farming operation takes place, particularly where there are footpaths crossing fields. Oil seed rape and field beans grow up to 2 metres in height making it difficult to identify walkers. Diverted to the farm track the machine operator will know where walkers are and are less likely to be a health and safety risk.*

*A contractor is employed with a metre width sprayer to spray off the footpath and in the case of oil seed rape and beans this requires a double spray to create a 2 metre path. Unfortunately, black grass is becoming resistant to many of today's sprays therefore this operation is often carried out up to three times a season which is costly and environmentally unfriendly.*

*The diverted route will be easier to signpost and maintain and with its firm surface available to walk at all times of the year.”*

- 3.2 In my view, this is a coherent and persuasive statement as to why it would be expedient to divert the path in the interests of the landowners.
- 3.3 Taking FP5 Stonely and FP19 Pertenhall as one continuous whole, the proposed diversion would not alter either point of termination of this path. If one were to consider the point at which FP5 and FP19 meet to be 'points of termination' to those paths, then the proposal would be altering those points of termination. However, the naming of the paths is merely a convenience to facilitate the administration of each local authority. In real terms neither path terminates where it joins the other at point B, but continues seamlessly irrespective of the crossing of the county boundary.
- 3.4 I am satisfied that the proposal would not alter a point of termination of either path.
- 3.5 The council must also give due regard to the effect that the making of a diversion order would have on the needs of agriculture. The proposed diversion would make the agricultural activities on the land crossed by the current route easier and more efficient.
- 3.6 In my opinion, the proposal meets the statutory tests for the making of a public path diversion order.
- 3.7 Before confirming a public path diversion order the council must be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion. The principal way in which the diverted route may be less convenient than the current route is in terms of distance to be walked. The distance between point A and point D along the definitive route is 1410 metres. The proposed new route is about metres, or 45% further.
- 3.8 The Open Spaces Society suggested that the new route would be substantially less convenient to the public due to its increase in distance and the number of right angle turns as opposed to the much more direct route of the definitive path.
- 3.9 It is true that the proposed diversion is less direct, but in my view this is of little relevance other than in terms of the distance this adds to the route. A 45% increase over the existing 1410 metres is, on the face of it, a significant factor. However, the proposed new route is almost entirely on a pre-existing hard farm track, with a short section of grassed headland between points G and H. Having walked both routes, I found the new route to be more convenient than the existing route despite the increase in distance. Even in warm dry weather in early September it was very difficult and tiring walking across the open fields between A, B and C, especially the A-B section. This was despite the fact that the line of the path had recently been marked out with tractor wheelings. I had sore ankles for a couple of days afterwards from the awkward cross-field walking.

- 3.10 It is my view that by diverting the path from cross field to existing farm tracks with robust all-weather surfaces not only is the proposed diversion not substantially less convenient but that it is actually more convenient than the more direct but difficult terrain of the definitive route.
- 3.11 The Council must also be satisfied that it is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole. The enjoyment of the walker on this path comes largely from the views and feelings of openness available. Walking south from Stonely there is a good view of Little Staughton church on the skyline almost directly ahead. However, a similar view is available from the diversion route and, if anything, the church can be seen for longer because of the curvature of the field between points B and C means that the church is not visible for much of that section of the definitive route. Also, the fact that on this section one is required to walk over an open field, much time is necessarily spent looking at the ground to make sure one's feet are placed safely so as not to turn one's ankles. The new route sometimes runs adjacent to a hedge on one side, but for the most part is as open as the existing route and nowhere, I believe, does it run between two hedges.
- 3.11 I am satisfied that it would be expedient to divert FPs 5 and 19 having had due regard to the effect the diversion would have on the public's enjoyment of the path as a whole.
- 3.12 There is no material provision in the Cambridgeshire County Council's or Bedford Borough Council's Rights of Way Improvement Plans which would be of significance in determining this proposed diversion.

#### The creation order

- 3.13 Paragraph 4.9 below spells out the tests of the Act which have to be satisfied before a Public Path Creation Order may be made. Is the path needed, and is it expedient to create a path?
- 3.14 Section K – L on the plan at appendix 1 lies entirely within the parish of Little Staughton. For reasons to do with the way in which the 1953 draft map was drawn up by reference to submissions from parish councils, FP19 Pertenhall does not extend into Little Staughton parish and meet the public road. This means that there is a gap in the network which renders the whole of FPs 5 Stonely and FP19 Pertenhall largely redundant as there is no public right of way beyond point D when travelling north to south, and no legal way to reach those paths from the road at point L when seeking to travel north.

- 3.15 In my view there is a great need for a path to be created to link FP19 Pertenhall in with the wider public highway and rights of way network.
- 3.16 The creation of a path between K and L would add to the convenience or enjoyment of a substantial section of the public by establishing for the first time a legal public right of way on foot between Kimbolton and Little Staughton, and linking the rights of way network in each of those areas. This would, in my opinion, add to the enjoyment of a substantial sector of the public.
- 3.17 The creation of the path between points K and L would have no adverse effect on the owner of that land. Mr Sheard, has consented to the creation as long as the proposed diversion goes ahead. The creation order would only be confirmed as an unopposed order or forwarded to the Secretary of State if opposed upon the successful confirmation of the diversion of FPs 5 and 19 referred to above. There would be no compensation payable as a consequence of the confirmation of the proposed creation order.
- 3.18 Objective 3.1 of the Bedford Borough Council's Rights of Way Improvement Plan 2012 – 2017 is to reduce rights of way network fragmentation. This proposal would contribute to the realization of that objective.
- 3.19 The path to be created between points K and L would be subject to the limitation and condition that the landowner would retain the right to have a field gate at or near point L, as long as a gap suitable for pedestrian use is maintained adjacent to any such gate.

#### **4 IMPLICATIONS**

##### (a) Legal

- 4.1 The power for the council to make an order to divert a public footpath is contained in section 119 of the Highways Act 1980.
- 4.2 Before **making** an order the council must be satisfied that it is expedient to do so in the interests of the owner, occupier or lessee of the land crossed by the path or in the interests of the public.
- 4.3 Before **making** an order the council must be satisfied that such an order would not alter any point of termination of the path, other than to another point on the same path, or another highway connected with it, and which is substantially as convenient to the public. That is, that the new termination point, if any, is substantially as convenient to the public.

- 4.4 The council must also give due regard to the effect that the **making** of a diversion order would have on the needs of agriculture and forestry and on the desirability of conserving flora, fauna and geographical and physiographical features [ss. 29 and 121(3) Highways Act 1980].
- 4.5 Before **confirming** an unopposed diversion order the council must be satisfied that, in the interests of those named in the order, it is expedient to confirm the order and that the path will not be substantially less convenient to the public as a consequence of the diversion.
- 4.6 Before **confirming** an unopposed diversion order the council must be satisfied that it is expedient to confirm the order having regard to the effect it will have on public enjoyment of the path as a whole and on land affected by any proposed new path, taking into account the provisions for compensation.
- 4.7 Before **confirming** an unopposed diversion order the council shall have regard to any material provision of a rights of way improvement plan prepared by any local authority whose area includes land over which the order would create or extinguish a public right of way.
- 4.8 The power for the council to make an order to create a public footpath is contained in section 26 of the Highways Act 1980.
- 4.9 Before **making** a creation order the council must be satisfied that there is a need for such a footpath and that it is expedient to create one, 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 provisions as to compensation contained in section 28.
- 4.10 In determining whether or not to **confirm** a creation order the council, or the Secretary of State as the case may be, shall have regard to any material provision of a rights of way improvement plan prepared by the local authority whose area includes land over which the proposed public footpath would be created.
- 4.11 A public footpath created by a public path creation order may be either unconditional or subject to such limitations and conditions as may be specified in the order.

4.12 The power for the Bedford Borough Council to make an order under s.119 of the Highways Act 1980 to divert a public footpath on land outside of its administrative area is contained in s.120(2)(b) of the 1980 Act:

“(2) The powers of making orders under sections 118 to 119B above are not exercisable by a council-

(a) ...

(b) with respect to any part of a highway which is outside their area, without the consent of every council in whose area it is...”

(b) Policy

4.13 Council policy is that new sections of public footpath created by means of diversion orders should, other than where they cross arable fields or certain other circumstances pertain, have a width of at least 2 metres. Where the path is being diverted to an existing track or similar linear feature then the new path should have a width equal to that of the track or linear feature.

(c) Resource

4.14 The present proposal can be implemented within the ordinary operating budget of the Highways and Transportation Team. The works necessary to implement the diversion order would be: a culvert and a gap in the hedge at point H and a field gate with an adjacent gap at point L on the plan at appendix 1. The new route will need the erection of 7 waymark posts, 2 in Cambridgeshire, 5 in Bedfordshire and a finger-post sign at point L. The gaps, gate, culvert and waymark posts in Cambridgeshire will be provided by and at the expense of the applicants Mrs Peck and Mr Sheard. The waymark posts and finger-post in Bedfordshire will be provided and erected by and at the expense of the Bedford Borough Council, in line with the policy and working practice of each authority respectively.

(d) Risk

4.15 The order is likely to be opposed, as two of the consultees have expressed their opposition to the proposal (see section 5 below). There is a risk, therefore, that a public hearing or public local inquiry would need to be held at the expense of the Borough Council. Such a hearing or inquiry is unlikely to require the engagement of legal advocates, and is a routine method of determining opposed orders. It is likely that any such tribunal could be held within the current operating budget and with existing staff within the rights of way team.

(e) Environmental

4.16 There are no environmental impacts associated with this proposal.

(f) Equalities Impact

4.17 The diversion of the footpaths from cross field to existing hard farm tracks would make the route as a whole accessible to people of more restricted mobility than is presently the case.

## **5 SUMMARY OF CONSULTATIONS AND OUTCOME**

5.1 Consultations were carried out with the statutory undertakers (utilities), the Kimbolton and Stonely Town Council; the Huntingdonshire District Council; the Pertenhall and Swineshead Parish Council; the Little Staughton Parish Council; the Ramblers' Association (both Beds and Hunts representatives), the Open Spaces Society, the Bedfordshire Rights of Way Association, and the local elected members for Huntingdonshire District Council, Cambridgeshire County Council and Bedford Borough Council.

5.2 The Kimbolton and Stonely Town Council responded:

*"It was discussed and members confirmed that they considered the amended route to be acceptable. It was therefore proposed by Councillor Poole, seconded by Councillor Mrs Stainer and **unanimously agreed to recommend acceptance of the proposal.**"*

5.3 The Pertenhall and Swineshead Parish Council responded:

*"As noted in the minutes of our Parish Council Meeting of 15<sup>th</sup> July 2015, Pertenhall & Swineshead Parish Council considered the proposal to divert the public footpath FP5 Stonely and FP19 Pertenhall, and the creation of a new public footpath known as FP27 Little Staughton. It was our unanimous decision to fully support this proposal."*

5.4 The Little Staughton Parish Council commented that they had discussed the proposal and **had no comments to make** regarding the application (sic).

5.5 The Huntingdonshire district Ramblers commented:

*“ [We] **will raise no objections to the proposed footpath diversions detailed in your letter provided it goes ahead in its entirety.** That is, the new footpath at K to L is created at the same time as the various footpath diversions.”*

5.6 The Bedford Ramblers commented:

*“The existing footpath between New Farm, Little Staughton and Stonely is direct and generally well maintained but lacking the public right of way link “FP27”. It is also on heavy clay and unpleasant to walk on in wet weather conditions.*

*The proposed diversion is longer but on a good walking surface and the addition of the section (FP27) becoming a public right of way, we think makes the changes a favourable option.*

*I can confirm that Bedfordshire Ramblers' Association therefore **has no objection to the proposed footpath changes** outlined in your letter.”*

5.7 The Open Spaces Society representative for the Bedford Borough area commented:

*“...it is only Mr Sheard who is offering anything in exchange for the fine cross field paths – namely his conditional consent for route K-L to be created.*

*Among other things, the proposed diversion, if confirmed, would have an overall adverse effect on the public enjoyment.*

*Therefore, the Open Spaces Society's position is now that **we will oppose the proposed diversion order** but, again as a way to a reach a compromise, and as a concession to Mr Sheard we would reluctantly accept the diversion of path C-D to the route C-I-J-D if the route K-L is created. We will not agree to the diversion of the path A-B-C to the route shown to its west.”*

5.8 The Bedfordshire Rights of Way Association commented:

*“As the aim is to create the link of footpath 27 to the Great Staughton Road we would reluctantly agree to the diversion on Mr Sheard's land C -I-J-D and the creation of Footpath27 link K-L.*

***We would object to the parts on Mrs Peck's land. A-E-M-F-G-H and also H-C on Mr Sheard's land.”***

- 5.9 The following utility companies responded to the consultation saying that they had no objections: BT, National Grid (electricity), Urbanetworks (electricity Cambs), Cable & Wireless and Virgin Media. No response was received from the remaining utilities
- 5.10 At the time of writing I am liaising with Huntingdonshire District Council to get their consent to Bedford Borough Council making a s.119 Highways Act 1980 order in their area. In discussion with the relevant officer at Hunts DC it seems that such consent is a technical formality and will be forthcoming once the appropriate mechanism for giving such consent is identified. This report is based upon the assumption that formal consent will be forthcoming, though **no order affecting land in Huntingdonshire District shall be made by this council until and unless we receive the required consent.**
- 5.11 No response was received from: Cambridgeshire County Councillor Downes; and Huntingdonshire District Councillor Gray

## **6 WARD COUNCILLOR'S VIEW**

- 6.1 No comments have been received from Bedford Borough Councillor Towler.

Title: The determination of a proposal to divert part of Public Footpath No. 5 Kimbolton & Stonely and Public Footpath No.19 Pertenhall and the creation of Public Footpath No. 27 Little Staughton under ss. 119 and 26 of the Highways Act 1980.	
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Report Contact Officer:	Martyn Brawn
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<i>File Reference:</i>	
<i>Previous relevant minutes:</i>	<i>Not applicable</i>
<i>Background papers:</i>	
<i>Appendices:</i>	<i>Appendix 1 – Proposal plan</i>

<b>Seen (optional)</b>		<i>Signature</i>	<i>Date</i>
Highways Assets Manager	Andy Prigmore		

<b>Approved:*</b>		<i>Signature</i>	<i>Date</i>
Assistant Director (Highways)	Glenn Barcham		

Reason (if other than for reasons set out in report)	
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<b>Refused:*</b>		<i>Signature</i>	<i>Date</i>
Assistant Director (Highways)	Glenn Barcham		
Reasons for refusal:			

\* One of these boxes **MUST** be completed by the decision-maker