

Appendix A

Legal and Policy Considerations in relation to:

The determination of an application to extinguish parts of Silsoe Footpath No. 16 and Bridleway No. 18 and to create an alternative footpath and bridleway in the parish of Silsoe.

A 1. Section 26 of the Highways Act 1980 enables the Highway Authority to create public footpaths, bridleways and restricted byways and is paraphrased below:

- (1) *Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, 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 that the creation of the path or way would have on the rights of persons interested in the land...*

It is expedient that the path or way should be created, the authority may by order made by them... ..create a footpath, bridleway or restricted byway over the land.

A 2. Section 118 of the Highways Act 1980 enables the Highway Authority to extinguish public footpaths, bridleways, and restricted byways and is paraphrased below:

- (1) *Where it appears to a council as respects a footpath, bridleway, or restricted byway in their area... ..that it is expedient that the path or way should be stopped up on the ground that it is no longer needed for public use, the council may by order made by them and submitted to and confirmed by the Secretary of State, or confirmed by them as an unopposed order, extinguish the public right of way over the path or way...*
- (2) *The Secretary of State shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless he or, as the case may be, they are satisfied that it is expedient to do so having regard to the extent (if any) to which it appears to him or, as the case may be, them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the right of way would have as respects land served by the path or way...*
- (3) - (4) *(omitted)*
- (5) *Where... ..proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with*

proceedings preliminary to the confirmation of a... public path diversion order... then, in considering-

- (a) under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or*
- (b) under subsection (2) above to what extent (if any) that the path or way would apart from the order be likely to be used by the public;*

the council or secretary of state, as the case may be, may have regard to the extent to which the... public path diversion order... would provide an alternative path or way.

- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.*

A 3. Section 119 of the Highways Act 1980 enables the Highway Authority to divert public footpaths, bridleways, and restricted byways. Section 119(2) states that:

(2) A public path diversion order shall not alter a point of termination of the path or way-

- (a) If that point is not on a highway; or*
- (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.*

A 4. In the situation where a bridleway terminates on a footpath, horse-riders and cyclists have no highway to legally continue over (the bridleway being a dead-end path for their class of user) and consequently the termination point of the bridleway cannot be altered under Section 119 of the 1980 Act in my opinion. The only recourse is to effect a concurrent extinguishment and creation under Sections 118 and 26 of the 1980 Act.

A 5. The case of *Hertfordshire County Council, R (on the application of) v Department of Environment Food & Rural Affairs [2005] EWHC 2363 (Admin)* addressed the use of concurrent extinguishments and creations to effect a diversion. Sullivan J. stated that Section 118 of the Highways Act 1980 was to be used to extinguish paths that were no longer needed and that Section 119 was to be used to extinguish paths that were needed but on a different alignment and that, accordingly, Sections 26 and 118 should not be combined to effect a diversion. Sullivan J. did recognise, however, that some paths which did not start on a highway *could* be moved by means of Sections 26 and 118 as the new path was not a direct replacement for the extinguished path.

A 6. Section 26(3A) of the Highways Act 1980 imposes a duty on Central Bedfordshire Council to have regard to any material provisions within a Rights of Way Improvement Plan when determining whether or not to confirm an unopposed creation, diversion or extinguishment order. The proposals do not conflict with the aims of the Council's Outdoor Access

Improvement Plan and, indeed, meet Objectives 5.5 and 5.6 which seek to identify and increase bridleway/cycleway network connectivity.

- A 7. Section 29 of the 1980 Act imposes a duty on the County Council to have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features when determining whether to make and confirm creation, extinguishment and diversion orders. The combined effect of the extinguishments and creation would extinguish a cross-field footpath - thus reducing the farmer's work in keeping paths clear of crops.