

## Appendix A – Legal and Policy Implications

### Legislation

- A.1. The Highways Act 1980 (“the 1980 Act”) empowers Central Bedfordshire Council to make legal orders to create, extinguish and divert public rights of way (footpaths, bridleways, and restricted byways) shown on the Definitive Map, which is the Council’s legal record of such rights. Sections 26 and 118 of the 1980 Act relate to the creation and extinguishment of such rights and are paraphrased respectively at Sections A11 and A5 below.
- A.2. The Development Management Committee under the Central Bedfordshire Council’s Constitution (E2 at Annex C) is the appropriate body to determine whether the Council, as highway authority, should make orders under the 1980 Act to create, divert, or extinguish a public right of way.
- A.3. It is the normal practice to move a public right of way by diverting it using Section 119 of the 1980 Act. However, Langford Bridleway No. 5 terminates at a footpath at points A and G making this legally a dead-end path for riders and cyclists. Consequently it is my opinion that a diversion could not meet the legislative tests of Section 119 and could not be diverted. In such situations it is possible to extinguish the existing paths and to create new alternatives.
- A.4. The legislative tests for creating and extinguishing public rights of way are detailed below. Essentially a path can only be extinguished if it is not needed for public use and a new path can only be created if there is a need for it. It is possible, however, to link a creation and extinguishment together so that an alternative route can be created to compensate for the route being extinguished.

### Public Path Extinguishment Order

- A.5. Section 118 of the 1980 Act enables the Highway Authority to extinguish public footpaths, bridleways, and restricted byways and is detailed 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.6. Langford Bridleway No. 5 currently runs from its junction with Footpath Nos. 12 and 19 (point B on the plan at Appendix 1) due south for a short distance along the Haul Road before crossing an arable field to a drain on the boundary between the parishes of Langford and Henlow (point Y). The bridleway continues over the drain in a southwards direction across a second arable field before turning due west at point Y to cross the Haul Road at point E. West of the Haul Road the legal line of the bridleway heads westwards before turning south-south-eastwards through the southernmost fishing lake belonging to the Letchworth Garden City Angling Association Ltd ("the LGCAA") before rejoining the Haul Road at point F to then follow this to its junction with Henlow Footpath No. 19 at the Poppy Hill river bridge where the bridleway terminates.

A.7. The bridleway has been obstructed by the fishing lake since its formation in c.1950- 1951 and by numerous trees within the

adjoining plantation. The bridleway is also obstructed by a number of structures on the LGCAA land as well as by the drain at point Y which does not have a bridge or culvert. With the exception of the lake, these obstructions can be considered temporary and must be disregarded under Section 118(6) of the 1980 Act. It is arguable that the fishing lake could also be considered temporary feature in that it is small enough to be drained and infilled if the right consents and approval were granted.

- A.8. The numerous representations made against previous orders to either delete the bridleway or divert it on to the Haul Road indicate that, were it open and available for public use, it would be used. The representations also demonstrate the local residents' desire for public access through the lakes area. This could be perceived as a need, not necessarily for a direct route between Langford and Henlow, but for a local route to enjoy the local County Wildlife Site. Based upon these representations, it is my opinion that the Council could not make an order solely to extinguish Bridleway No. 5, nor could it confirm it as an unopposed order on the ground that the bridleway would not be used in the future if it were possible to do so.
- A.9. It is possible, however, to make a concurrent extinguishment and creation order where the needs of the users are accommodated by the alternative path to be created. In my opinion, an order extinguishing the bridleway could be made and confirmed if considered concurrently with an order creating both an alternative bridleway along the Haul Road, and a new footpath between the southernmost two lakes linking to the Millennium Field.
- A.10. In my opinion it would be expedient for the Council to make such an extinguishment order as it would remove the fishing lake, which forms part of a County Wildlife Site from the threat of infilling or draining as a means of opening up the bridleway through its middle. The extinguishment of the bridleway would therefore have a significant beneficial effect on the land held by the LGCAA.

### **Public Path Creation Order**

- A.11. Section 26 of the Highways Act 1980 enables the Highway Authority to create public footpaths, bridleways and restricted byways and is detailed 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, account being taken of the provisions o as to compensation contained in Section 28 below...*

*(2) - (3A) (omitted)*

*(4) A right of way created by a public path creation order may be either unconditional or subject to such limitations and conditions as specified in the order.*

*(5) - (6) (omitted)*

A.12. Henlow Bridleway No. 5 connects only to public footpaths at both its northern and southern ends and consequently cannot be legally accessed by equestrians and cyclists. However, it can legally be used by pedestrians – even if it is physically impassable due to the obstructions along it.

A.13. The Haul Road has been identified in the local parish Green Infrastructure Plans as a regional cycling route. This view is reinforced by its inclusion in the 2008 Mid-Beds Green Infrastructure Plan. Even though the Haul Road is designated as footpath for most of its length, it currently enjoys a degree of informal cycle and equestrian use. The Haul Road has also been identified as a “Safe Route to School” as it avoids the A6001 and would provide an almost traffic free route to Henlow Middle School.

A.14. The land over which the new bridleway would pass is either surfaced or unsurfaced access track which already has a public footpath; or arable field-edge (between points D-E). Consequently the majority of the route of the new bridleway would see little change beyond surfacing improvements and impact would be generally minimal. The section of arable field between points D-E is subject to periodic standing water and so drainage and surfacing improvements would not significantly detract from agricultural productivity once the existing bridleway between points Y-Z-E had been extinguished.

A.15. The proposed bridleway along the Haul Road between points A-B and C-D-E-F, in conjunction with the proposed bridleway along Poppy Hill Road between points G-H and thence on to Church Road at point I will provide a sustainable transport link between Langford and Henlow and will add to the enjoyment and convenience of a substantial section of the public and to the convenience of local residents, especially pupils of the Middle School. Consequently it is my opinion that the Council could make and confirm an order to create the above sections of bridleway over the existing public

footpaths.

- A.16. The creation of the new bridleway would greatly facilitate cycling between Langford and Henlow. However, the bridleway along the Haul Road exists within an arable environment and does not have any views comparable to those available from the existing line of Bridleway No. 5 through the lakes area. Case law, and specifically *Regina v Surrey County Council ex parte Send Parish Council* set out below, and recent Counsel's opinion, also described below, indicate that the Council needs to provide the public with a route that passes through the lakes area.
- A.17. As stated, Bridleway No. 5 is not legally accessible to equestrians and cyclists as it is landlocked. The representations made by local residents and Henlow Parish Council have all related to the availability of a pedestrian route through the lakes areas. The Council has considered both these factors in deciding that it is appropriate to create a public footpath rather than a public bridleway through the lakes area.
- A.18. The proposed footpath has a junction with the proposed new bridleway on Haul Road at point M and would head in a west-south-westwards direction around the northern side of the LGCAA car park to then pass along the causeway between the two fishing lakes before climbing onto the riverside bund and crossing the River Ivel by means of a new footbridge onto the Millennium Field. The footpath would then continue westwards across the Millennium Field, which is public access land owned by the Parish Council, to terminate at its junction with Henlow Footpath No. 26.
- A.19. On the east side of the River Ivel the proposed footpath only affects LGCAA land. The LGCAA has made numerous representations to the effect that the new footpath would damage the fishing - and thus the business interests of the club, and the lakes' environment. The various grounds are detailed and addressed in the main report. The LGCAA's representations all ignore the fact that a public right of way already exists within the locality of the southernmost fishing lake. When this fact is taken into account - assuming that the bridleway not obstructed, the various grounds are significantly diminished. The creation of the new footpath would affect the running of the fishing club - but how much more this effect would be than if the bridleway were opened on its legal line is unclear.
- A.20. The new footpath would provide a number of short circular routes out of both Henlow and Langford and would give local residents a usable public right of way through the lakes area fished by the LGCAA as a replacement for the bridleway to be extinguished. Consequently, it is my opinion that the Council could make and confirm an order to create the new footpath between the Haul Road and the Millennium Field.

## Case law

- A.21. The legislation contained within the 1980 Act has been the subject to scrutiny and debate within the Courts, with several judgments pertinent to this report being handed down.
- A.22. The case of *R v Lake District Special Planning Board ex parte Bernstein* [1983] addressed the diversion of a footpath onto an existing route used by the public. Hodgson J. held that such a diversion was in effect an extinguishment but without recourse to the section of the act which should be used for that purpose. The diversion of the bridleway onto the Haul Road would effectively extinguish the public footpath which currently runs over the Haul Road by subsuming it within the new bridleway with provision of an alternative pedestrian route. Furthermore, as either end of the bridleway terminates on a footpath this can, in my opinion, be considered legally a dead-end for equestrian and cyclists and thus the termination points could not be moved by a diversion order. Consequently the Council has resorted to moving the bridleway by means of concurrent creation and extinguishment orders.
- A.23. 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 of the 1980 Act 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. Moreover, the new section of bridleway is more than a direct replacement as it covers a greater length to connect up with public highway at either end. The current proposal moves a bridleway which terminates at a footpath at either end and therefore is only legally available to pedestrians. In my opinion, greater consideration should therefore be given to the effect of the proposal on pedestrians, rather than to equestrians and cyclists.
- A.24. The case of *Regina v Surrey County Council ex parte Send Parish Council QBD* [1979] addressed the case use of a path being effectively diverted in order for the local County Council to avoid taking enforcement action against land owners who had obstructed the original line of the path. The local Parish Council had applied under the predecessor of Section 130 of the 1980 Act for the local Highway Authority in that case to act. The court heard arguments as to whether a diversion rather than enforcement constituted 'proper proceedings' for the purposes of what is now Section 130(6) of the 1980 Act. The court held that the word 'proper' allowed for discretion

by the highway authority as long as its actions accorded with the policies and objectives of the Act. Geoffrey Lane LJ held that the Highway Authority should "...promote the interests of those who enjoy the highway or should be enjoying the right of way..." and should not act in the interests of the land owners against the users.

- A.25. The case of *Associated Provincial Picture Houses v Wednesbury Corporation* [1947] 1 KB 223 set down the legal precedent for what is known as "Wednesbury unreasonableness". In the case, Lord Greene MR stated that "...It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority...."
- A.26. In the context of the current proposal, it is my opinion that the Council has considered what is required to be considered – the effects of the proposal on the users, on those with a legal interest in the land, and on the environment in light of the legislation. The Council, in complying with its duties under the 1980 Act, as directed by case law and restricted by the geography of the site, are not, in my opinion, acting in a manner that could be seen to be "Wednesbury unreasonable".
- A.27. The Council can only act in accordance with those powers given to it by Act of Parliament, and by Statutory Instrument or Regulation. Any action beyond the scope of such powers is termed "ultra vires" and is unlawful. The Council has the power to carry out proposal under the legislation contained within the 1980 Act.
- A.28. The LGCAA submitted an application for a second Definitive Map Modification Order to delete that part of Bridleway No. 5 through the lakes area in January 2007. The LGCAA adduced some additional maps and aerial photographs in support of the application. Having taken legal advice on the matter, the former County Council's Rights of Way Team Leader wrote to the agent for the LGCAA in July 2007 stating "...the new evidence so far submitted is insufficient to re-consider the case and that there has not been an 'event' as required under s.53(3)(c) of the Wildlife and Countryside Act 1981 . Unless further evidence is submitted which causes me to change my view, I shall recommend to the Council's Control Management that as no 'event' has occurred the application should be refused... ..As it is

our policy to determine these applications in strict chronological order of receipt, it will be some months before we are in a position to put the matter to committee...”.

- A.29. Unfortunately, this application was never put before the committee and the former County Council was wound up in March 2009. Due to an oversight, the case has only recently come to light as being a “live” application. As no new evidence has been submitted since 2007, it is my opinion that the former Council’s intention to refuse the application is still valid and should be carried out by being put before the Development Management Committee for formal refusal of this application later in the year.

### **Counsel’s Opinion**

- A.30. The Council has sought independent legal opinion on the issues to hand and has been advised that any extinguishment of the Bridleway No. 5 through the lakes area would need to be compensated by the creation of additional public pedestrian access through the lakes area. This is because pedestrians currently have a right to walk either through the lakes area or along the Haul Road along either Bridleway No. 5 or Footpath No. 25 respectively. Equestrians, by contrast, theoretically only have one right of access which would be moved onto the Haul Road. This access is theoretical as only pedestrians can legally access the bridleway and thus should be given greater consideration.
- A.31. The legal opinion consequently states that the proposed creation of the bridleway along the Haul Road as the sole compensation for the bridleway to be extinguished would fail to meet the legislative tests as it would not be in the interests of pedestrian users. The *Send* case referred to above considered whether a Council’s actions in resolving an obstruction constituted “proper proceedings”. The court held that the Council did have discretion, but this was limited in that it had to promote the interests of the users and rather than those of the land owners.
- A.32. The re-routing of the public right of way out of the lake, rather than infilling, is in the interests of the public as representations indicate that they wish to enjoy the lake’s views and environs – however, any re-routing should not be a disbenefit to pedestrians. A new footpath through the lakes area - ideally as a loop around the lake allowing views over the lake’s areas, would thus provide an alternative right of way to the bridleway which only walkers can currently legitimately access. The second choice option of a footpath around the lake western side of the lake to connect to the Haul Road at either end would fulfil this role.
- A.33. The current proposal does not provide a direct alternative to the bridleway as it does not form a loop, but instead forms a link to a parallel footpath by means of a river bridge - thus providing



members of the public with enhanced network connectivity. The main protagonists involved in trying to gain useable public access through the lakes area are satisfied by the recommended footpath and bridge.

- A.34. Counsel's opinion also supports the making of concurrent creation and extinguishment orders, rather than a diversion order, to move the bridleway out of the lake onto the existing footpaths as this probably would not be affected by the *Hertfordshire* ruling.
- A.35. The LGCAA has sought its own independent Queen's Counsel's opinion which has been divulged to the Council. The main points identified by QC are as follows:
- (a) That the creation of the bridleway along the Haul Road is a satisfactory replacement for the bridleway through the lake for all classes of user (walkers, cyclists and equestrians).
  - (b) As the new bridleway would resolve the obstruction issue, the creation of the new footpath is a completely separate issue.
  - (c) Any compulsory creation under Section 26 of the 1980 Act must "have regard to the effect which the creation of the path or way would have on the rights of persons interested in the land".
  - (d) The Council have conflated the public's need for a new path with the resolution of the obstruction. Either the Haul Road will provide a satisfactory alternative to Bridleway No. 5 or it will not; the provision of a new footpath will not make the Haul Road any more satisfactory.
  - (e) The *Send* judgment has two relevant points: that the Council's primary duty is to restore an obstructed highway; and that the Council has a duty to act to restore a highway on the representations of a Parish Council – but that the Parish Council cannot dictate how the Council discharges its duty.
- A.36. (f) The *Send* judgment supports the view that the interests of the users comes before the interests of the land owners in the matter of resolving an obstruction. However, under Section 26 the Council has a duty to consider the effects on the owners of the land.
- A.37. These points have been addressed by the text above and within the main report.

### **Supplementary Requirements of the Highways Act 1980**

- A.38. The Council and Secretary of State have a duty under Section 26(3A) of the 1980 Act to consider any material provisions contained within a Rights of Way Improvement Plan when determining whether

or not to confirm a creation, diversion, or extinguishment order. The Council's Outdoor Access Improvement Plan is currently being redrafted.

- A.39. 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.
- A.40. The effect of the extinguishment is to preserve the LGCAA fishing lake by removing any threat to it from infilling in order to facilitate passage along the legal line of the existing bridleway. The extinguishment of the bridleway would therefore preserve not only the physiographical feature but would also preserve the lacustrine environment, the flora and fauna of which are part of a County Wildlife Site. The extinguishment of the current bridleway would also remove the duty of the adjoining farmer to reinstate the line of the bridleway across their arable field and to prevent it being obstructed by crops.
- A.41. The creation of some of the new sections of bridleway will lie on surfaced footpaths fenced out of neighbouring fields and therefore would have a negligible impact the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. Some sections of the new bridleway would be created over, or immediately adjacent to, the overgrown sections of the Haul Road however. This would require some degree of brush clearance and the removal or cutting back of a limited number of hawthorn, elder, willow and blackthorn.
- A.42. The creation of the footpath would pass next to the LGCAA car park and then along the causeway between two fishing lakes and then over an area of bunded earth before crossing the River Ivel by means of a new river bridge. The footpath then crosses an open area of grassland. For about half its distance, the footpath would follow existing tracks over on LGCAA land. The new footpath would pass through a cutting in the earth bund and weave between existing trees to minimise the impact on vegetation. The bridge would have a comparatively small footprint on LGCAA land and, where a significant earth ramp is required on the Millennium Field this would be over an area of mown grass with limited ecological impact. The bridge is not envisaged to impact detrimentally on the lacustrine, riparian or fluvial environments.

### **Compensation Issues**

- A.43. Section 28 of the 1980 Act gives any person with a legal interest in land affected by a Public Path Order the right to claim compensation from the Council, as Highway Authority. Compensation is payable where the value of interest of a person in the land is depreciated, or that the person has suffered damage as a consequence of being

disturbed in his enjoyment of the land as a consequence of the coming into operation of a Public Path Creation Order. An interest in the land includes any sporting rights.

- A.44. The LGCAA has stated that it intends to seek maximum compensation for any public rights of way created over its land, which also includes part of the Haul Road, and would claim compensation on, amongst other things, the following grounds:
1. the diminution of the value of the land,
  2. the permanent loss of income from the operation of the site (consequent upon the loss of 11 (21%) of the swims currently available),
  3. the permanent adverse effect on the economic activity of the club,
  4. the cost of the provision of secure fencing on either side of the footpath to prevent trespass and secure the lake areas,
  5. the need to provide replacement secure car parking,
  6. the increased costs of operation of the site owing to its bisection by a public footpath.
- A.45. The value of any compensation has to be weighed against any benefit to those with an interest in the land which results from the extinguishment of any pre-existing public right. In this case, the extinguishment of Bridleway No. 5 which currently passes through the LGCAA car park and across the southern fishing lake – which is an essential part of the organisation's raison d'être.
- A.46. Broadly, the value of any compensation can be calculated from the difference in area of the existing and proposed paths multiplied by the relevant value of the land. This though is complicated by the intrinsic value placed upon any potential disturbance of the owner's enjoyment in the land.
- A.47. At the time of writing (February 2012) only one other land owner, Mrs. Claire Parrish, has mentioned compensation. Mrs. Parrish has agreed to the Council replanting her boundary hedge to improve security in lieu of any direct monetary payment.
- A.48. The Council has commissioned an external company, Bidwells LLP, to undertake an independent valuation of the likely levels of compensation payable to all the parties affected by this proposal. At the time of writing (February 2012) Bidwells have yet to submit a formal valuation for the likely levels of compensation. However, based on recent compensation claims elsewhere, it is my opinion that the levels of compensation payable to other landowners on the west side of the river are likely to be minimal due to the surfacing and width of the existing footpath to be subsumed within the new

bridleway.

### **Rights of Way Policies**

- A.49. Langford Bridleway No. 5 is recorded in the Council's anomalies database. This database lists all the issues affecting the public rights of way network. The Council seeks to resolve anomalies at its own cost to enhance and effectively manage and maintain the network. The work involved in making Bridleway No. 5 usable by those users legally entitled to use it therefore within the aims of the Council's Anomalies Policy which is currently being drafted.
- A.50. The Outdoor Access Improvement Plan 2006-11 is the Council's adopted policy on public rights of way. The plan, which is now in the process of being redrafted identified the parishes of Henlow and Langford as "Priority 1 improvement areas". The creation of the new bridleway and footpath will improve network connectivity between and within these parishes.
- A.51. The Countryside Access Team's draft Applications Policy specifies that new or diverted footpath should have a minimum width of 2.0 metres and a new bridleway should have a minimum width of 4.0 metres. For council-generated schemes, such as the current proposal, this minimum can be reduced where necessary to secure agreement.

### **CBC Planning Policy**

- A.52. The construction of a significant structure over and adjoining the River Ivel is likely to cause concern for local residents. As a unitary authority Central Bedfordshire Council is both the Highway Authority and the Planning Authority. In such cases where bridges are constructed on the public highway it is generally accepted (as reported in "*Halsbury's Laws of England*") that planning consent can be deemed to have been granted. Consequently there is no additional requirement to consult on and submit a planning application for the construction of a footbridge over the River Ivel if on a public highway.
- A.53. If the new bridge is to be constructed prior to the footpath creation order coming into operation, then there is a possibility that planning permission may be required. Consultations with the Planning Team have not identified any issues which would affect the granting of consent for the proposed bridge.

### **CBC Minerals & Waste Policy**

- A.54. The Combined Minerals and Waste Core Strategy is due to be submitted to the Secretary of State in mid-2012. Previously the Waste Site Allocations Plan Issues & Options Consultation Paper II set out a portfolio of potential new sites for waste facilities nominated

by waste operators and landowners. This underwent public consultation from 1st October to 30th November 2007. Following this paper, a further eight waste sites were put forward for possible inclusion within the Minerals & Waste Local Development Framework which led to additional public consultation from between 28th April and 2nd June 2008. Significant representations were received against landfill at Poppy Hill Lakes leading to the site not being adopted.

- A.55. The flooded sites of mineral extraction at Poppy Hill no longer have mineral extraction permission. This ceased to be/have effect back in c.1996 when the former County Council consulted on a number of sites to be considered as “Allocated Sites”. The Poppy Hill site was not allocated. However, the old mineral extraction permission had a separate clause for restoration which continues to be in force to-date, even though extraction permission has lapsed. This was to facilitate restoration by subsequent owners should the original extraction company disappear. However, Central Bedfordshire Council’s Minerals & Waste Team considers that the lakes site has already been “restored” to fishing lake status – rather than being infilled and brought back to arable use. Consequently the Council, as the Planning Authority, do not intend to take any action to enforce the original restoration conditions.
- A.56. Any further reinstatement (infilling) based on the old permissions could only utilise the existing spoil/overburden which is currently banded within the site’s boundaries. Any need to provide additional infill to provide a suitable level of land for use as a public highway would have to be subject to a new landfill licence application – which is, in itself, very costly and would be opposed locally.

### **Environmental policies**

- A.57. The southernmost lakes at Poppy Hill form part of a local County Wildlife Site (“CWS”). Whilst CWS status does not offer any statutory protection for the site or right of access, however for any significant change of land use the Council, as Planning Authority, would expect the wildlife interest to be taken into account alongside other normal planning considerations.
- A.58. The Haul Road is identified as a “proposed national cycle route” within Mid-Beds Green Infrastructure Plan 2008. The route is also identified as a “strategic Footpath – the Kingfisher Way”.
- A.59. Central Bedfordshire Council’s policy document entitled “More People Cycling: A Strategy for Central Bedfordshire - May 2010” identifies a number of national indicators which this proposal would contribute to. These include: NI 175 - Access to services and facilities by public transport, walking and cycling; NI 198 - Children travelling to school – mode of travel usually used. The Strategy also includes the following local indicators: Increasing the number of

people cycling; Improving the quality of the cycling environment; and Improving the safety and perceived safety of cycling. The new bridleway will be surfaced where needed to provide a cycle route between Langford and Henlow Middle School enabling local residents to travel an almost vehicle-free route between the two villages.

- A.60. The Haul Road between Langford and Henlow is also identified as a “Regional Route” within Central Bedfordshire Council’s Strategic Cycle Network and has previously been identified as the preferred route for part of Sustrans’ Great North Cycle Route No. 12.
- A.61. The proposal also links in to the cycling indicators within Central Bedfordshire Council’s Local Transport Plan – specifically: Travel to work modal split - Increase the percentage of people regularly cycling to work across Central Bedfordshire; Children cycling to school - Increase the percentage of children regularly cycling to school across Central Bedfordshire; Accessibility of the Rights of Way Network - Increase the percentage of the Rights of Way Network which is easy to use; and Completeness of the Cycle Network - Increase the percentage of the identified network of cycle routes which are in place.

### **Environment Agency and Internal Drainage Board Considerations**

- A.62. The Environment Agency has statutory powers to protect major watercourses and to prevent obstructions on them. As such the Council must obtain consent from the Agency before any works affecting the River Ivel. Central Bedfordshire Council has obtained an approval in principal from the Agency for the proposed river bridge. Any formal consent will only be granted after finalised plans of the proposed bridge and any connecting ramps or structures have been submitted. Such plans would be drawn up by the company chosen to construct the bridge.
- A.63. The Bedfordshire and River Ivel Internal Drainage Board (“IDB”) also have a statutory responsibility for maintaining and protecting lesser water courses within its area, which includes the floodplain of the River Ivel. Consent for any structure affecting a watercourse is required within an IDB controlled area. The replacement of the existing pedestrian footbridge with a culvert suitable for equestrian/cycle use at point D requires consent – which has already been granted by the IDB.

### **Parish Council policies**

- A.64. The Langford Parish Green Infrastructure Plan identifies a number of key GI improvements. These include: upgrading the bridleway to cycleway – to provide access from Common Road to Henlow School and on to Arlesey station (which is identified as a “Community Priority”); and creating a circular walk incorporating the river

(although the actual route is not specified).

- A.65. The Henlow Parish Green Infrastructure Plan identifies a number of key GI improvements. These include: creating a riverside footpath at the southern end of Poppy Hill Lakes; providing a footbridge over the River Ivel to link the Millennium Meadows to Poppy Hill Lakes; providing public access within the Poppy Hill Lakes area; and creating a new section of the Great North Cycleway by upgrading footpaths to bridleway where needed. Two of these proposals are within the parish's top eight priority aspirations.

### **Human Rights Act 1998**

- A.66. Section 6 of the Human Rights Act 1998 states it is unlawful of the Council to act in a way which is incompatible with a Convention right unless, as the result of one or more provisions of primary legislation, the authority could not have acted differently; or in the case of one or more provisions of primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.
- A.67. Currently the public have a right of way through the aforementioned fishing lake. The moving of this bridleway onto the nearby Haul Road, which is already occupied by a public footpath, would deprive the public of a scenic route they are currently entitled to use. The 1980 Act requires the Council, as Highway Authority, to assert and protect this right. Independent legal advice indicates that not providing a public right of way through the lakes area owned by the LGCAA would be in breach of this statutory duty. Consequently the Council cannot act any differently to what it is proposing to do – which is to provide public access over land owned by the LGCAA. The Council does have discretion about how it provides this access and has looked at a number of options and has chosen the one it considers best meets the needs of the public with the least impact on the land owners.
- A.68. Elsewhere the proposals seek to create new public bridleway rights over existing public footpaths. These routes are already being informally by members of the public as bridleways and the affected landowners (with the exception of the LGCAA and Mr. & Mrs. Chennells) have all consented to the proposals.
- A.69. Individuals and businesses have a right to privacy and security under Article 8 of the Human Rights Act 1988. The proposals will impact on the privacy and security of the LGCAA by asserting the public's right to use an alternative route to the existing public right of way. The infringement caused by the new rights of way has to be balanced, however, by the impact on the LGCAA caused by the Council enforcing the existing legal line of Bridleway No. 5 through the southernmost fishing lake. The perceived disturbance to the

anglers by members of the public using the new right of way must thus be weighed against the potential removal of its fishing lake to allow members of the public to use the existing legal line of the bridleway.

- A.70. The proposals seek to create new and alternative public rights of way to the ones currently in existence. The new routes will have improved surfacing and all structures will be Equalities Act 2010 legislation compliant to facilitate use by mobility impaired users.