

## Central Bedfordshire Council

Development Management Committee

20/06/2018

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### **The proposed extinguishment of part of Toddington Footpath No. 58 and the concurrent creation of a replacement section of Toddington Bridleway No. 58**

Report of Paul Mason - Assistant Director - Highways

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#### **Purpose of this report**

1. To determine whether parts of Toddington Footpath No. 58 should be stopped up and replaced with a bridleway to resolve issues relating to the fact that the current footpath is obstructed where it passes through several rear gardens and connects to a bridleway which is a legal dead-end.

#### **RECOMMENDATIONS**

The Committee is asked to:

1. Approve the making of a Council-generated public path order under Section 118 of the Highways Act 1980 (“the Act”) to stop up part of Toddington Footpath No. 58 between points A-B-C-D because it is expedient to do so on the grounds that it is not needed for public use and is unlikely to be used due to the proposed creation of an alternative bridleway.
2. Approve the making of a concurrent Council-generated public path order under Section 26 of the Highways Act 1980 to create a new part of Toddington Bridleway No. 58 between points A-E-B-F-G because it is expedient to create a bridleway as it is needed and would improve the convenience of local residents.

#### **Issues**

2. The split status of Toddington Footpath/Bridleway No. 58 has been a local anomaly on the public rights of way network since c.1952 prior to the publication of the Definitive Map and Statement. Part of the bridleway section was diverted to run to the north of Crowbush Farm in 2007 by Bedfordshire County Council. However, the County Council did not address either the differential status, or the fact that the footpath section of the path runs through the rear gardens of eight properties in Bradford Road at the time.

3. Bradford Road in Toddington was built in the mid-1950s as part of the urban expansion of the village by South Beds District Council. The new estate was held as council housing. Some of the properties are still owned by Central Bedfordshire Council or Bedfordshire Pilgrims Housing Association, although about half are now in private ownership. There is no record of the District Council attempting to divert the footpath out of the properties being built although, at this time, the process of recording public rights of way was still on-going and no definitive map of public rights of way had been published.
4. Members of the public currently attempting to use the footpath must instead use an alternative route comprising of the paved pedestrian access to the fronts of Nos. 1-19 Kimberwell Close and then utilise an *ad hoc* route which cuts through a hedge into an arable field. The used route runs around the edge of the field before cutting through another hedge into the recreation ground owned by Toddington Parish Council. Walkers have then tended to wander at will across the parish council's recreation ground rather than follow the line of the footpath which cuts across the ground to connect to the bridleway (see plan at Appendix A).
5. The obstructed nature of the footpath, running through the odd numbers of Bradford Road (Nos. 5-19), became an issue again during the process of trying to resolve the status mismatch in c.2015. As part of an initial consultation, the farmer of the adjoining arable field was contacted to see if he would consent to having the footpath diverted around the edge of his field. The farmer refused to consent to having a formal public right of way over his land and asked that the legal line of the footpath, which is obstructed by numerous garden fences, be opened up and the holes made in his hedge repaired.
6. This report proposes that Toddington Footpath No. 58 be stopped up where it runs through the Bradford Road properties (between points C-D on the plan at Appendix A) and is replaced with a new 4 metre wide bridleway that would run along the paved access path (between points F-G). This access path is owned by Central Bedfordshire Council and managed by the Assets and Housing Services teams. The section of footpath crossing the parish council's recreation ground will also be stopped up between points A-B and replaced by a field-edge bridleway with a width of 4 metres. In order to maximise space in the recreation ground, the existing overgrown hedge will be cut back by at least 3 metres.
7. The section of footpath between points B-C runs at the rear of the gardens of Nos. 15, 17 and 19 Bradford Road. There is no alternative route for the right of way without forcing the proposed new bridleway onto a third-party land owner: in this case the farmer who has already refused to accept the footpath. Consequently, the footpath between points B-C will be replaced by the new bridleway which will be moved to the very edge of, but remain within, the effected curtilages of these three properties. Currently the rear fences of these properties do not align with the historic hedge boundary of the adjoining arable field and recreation ground – instead these fences are set into the respective properties' curtilages by approximately 1.5 metres leaving a corresponding 1.5 metres of dead space outside the garden fences.
8. The proposed bridleway between points B-F would utilise the dead space behind the current garden fences plus an additional approximate 1.5 –

1.8 metres of land within the gardens of Nos. 15 and 17. This would result in a short (20 metre) section of bridleway with a width of 3 metres. As the proposed bridleway would straddle the existing rear fences to these properties, which are low chain-link or boarded fences, these would have to be removed. By way of compensation, the Council would provide new 1.8 metre high panel fencing alongside the new bridleway.

9. The section of bridleway between points B-F would require the removal of a variety of bushes and a mature *leylandii* tree near point C and the removal of a limb from a mature ash tree (see Appendix C). Additionally, a mature but structurally unsound apple tree at the back of the garden of No. 17 would need to be removed. The owner would be compensated by the Council providing two new apple trees in its stead. This section of the bridleway would be levelled and surfaced with aggregate to provide a suitable and safe surface for walkers, cyclists and horses.
10. A badger sett is situated within the rear garden of No. 19 close to point B on the plan at Appendix A. The presence of the badgers has been investigated by an ecologist within the Countryside Team. The badgers roam throughout the area with evidence of their grubbing up the grass being seen near point F. Badger runs are present all along the garden-field boundaries in the area, see Appendix B for details. The proposed fencing would separate the sett from the bridleway but would still allow the badgers to access the areas visited by them.

### **Legal and Policy Considerations**

11. The Highways Act 1980 gives Central Bedfordshire Council the discretionary power to create, stop up and divert public rights of way under sections 26, 118 and 119 respectively. This proposal requires the stopping up of a footpath and the creation of a bridleway. This cannot be done under Section 119 as a diversion because of the proposed change in status of the right of way. Consequently, the footpath needs to be stopped up under Section 118 and the new bridleway concurrently created under Section 26 of the 1980 Act.
12. Central Bedfordshire Council has a duty under Section 130 of the 1980 Act to assert and protect the rights of the public to use those public rights of way recorded on the Definitive Map and Statement. However, the Council does have some degree of discretion in how it deals with obstructed routes. However, case law (*R v Surrey County Council ex parte Send Parish Council [1979]*) has clarified that in resolving any obstruction, the Council must act in the interests of the users rather than those land owners who have obstructed the right of way. In his judgment, which pre-dated the 1981 Act, Lane L.J. stated:

*It is at this point that, in my judgment, the county council have fallen down. One can see how it happened. They were influenced by the so-called hardship to the frontagers in having to remove their summer-houses and wattle fences and so on, though the extent of those hardships seems from the photograph to have lost nothing in the telling. They were alarmed by the length of time and the amount of money that legal proceedings would involve. As to the length of time, however, this argument started at the latest in 1969 and another month or two would not make very much difference*

*there. Whatever form of proceeding is taken—and some form of proceeding must be taken—it is all going to cost money. The county council were impressed by the simplicity of the solution that was apparently provided by the new and alternative path. What it seems to me they did not realise, or, if they realised it, what they disregarded, was the fact that, looked at objectively, they were acting in the interest of the frontagers, in the interest of the people who had in fact obstructed this public footpath, and not in the interest of those who should have been enjoying the use of the right of way over the footpath. It seems to me that no reasonable local authority could have so acted if they had truly had in mind the ambit of their duty under section 116 [now S.130]. What they have in fact attempted to do is to adopt a course of action—that is to say, proceedings under section 110 [now S.118]—that is most likely to result in the extinguishment of the footpath without any hope of successful appeal on the part of the parish council or the villagers. This method of procedure avoids the necessity of having to prove that the new path is shorter or more commodious, which they would have to show were they to proceed under section 111 [now S.119] rather than section 110 [now S.118]. In other words, if the old path were open, free for access, as ex hypothesi it should be, and if one started from that basis, it seems to me that the county council could not succeed.*

13. By keeping the proposed bridleway on land in either the same ownership or on land owned by the Council this proposal will not impact third-party land owners and is unlikely to fall foul of the *Send* ruling.

#### Stopping up of Footpath No. 58 under Section 118

14. Section 118 of the Act enables the council to stop up (extinguish) a public footpath if it considers it expedient to do so on the ground it is no longer needed for public use, having regard to the extent the path would be used apart from the order. The fact that the footpath is obstructed by several garden fences must be disregarded when considering whether the footpath is needed and the extent to which it would be used if not stopped up. The creation of an alternative route – namely the replacement bridleway – can be considered as a mitigating factor when considering the above.
15. The section of Footpath No. 58 to be stopped up would not be needed for public use as the new bridleway would provide a better surfaced and wider alternative route of similar length. Similarly, the presence of the alternative bridleway is likely to mean that the future use of the footpath through the rear gardens would be very low.
16. The Council must also consider the effect of the stopping up on the land over which the path runs and on the land served by the path. The stopping up would benefit the residents of Nos. 5, 7, 9, 11 and 13 Bradford Road as it would improve their privacy and security by removing public access to the private gardens. Conversely it means that (theoretically) those residents of the properties crossed by the footpath would have to walk via Bradford Road and Kimberwell Close to access the recreation ground rather than starting within their own back gardens. The lands served by the path (Kimberwell Close and

the recreation ground would be unaffected by the stopping up as the new bridleway would provide an alternative route of similar length.

17. Consequently, an extinguishment order can be made and confirmed to stop up the affected sections of Toddington Footpath No. 58 in conjunction with a concurrent creation of the replacement bridleway.

#### Creation of Bridleway No. 58 under Section 26

18. Section 26 of the 1980 Act enables the Council to compulsorily create a new bridleway if it considers that there is a need for a bridleway and that it is satisfied that it is expedient to do so, having regard to the convenience of persons resident in the area, taking account of the effect the creation would have on the rights of persons with an interest in the land – in this case the owners and tenants. The Council should have regard to the extent to which the public path creation order would provide an alternative path or way to the proposed extinguished route
19. Bridleway No. 58 is currently a dead-end bridleway, running as it does westwards from Luton Road to terminate at its junction with Footpath No. 58 just to the north of Crowbush Farm (see plan at Appendix A). To facilitate onwards travel for equestrians, but principally for cyclists, the footpath needs to be upgraded to a bridleway. This would resolve one of the anomalies recorded on the Council's "Anomalies Database", whilst the relocation of the route onto the accessible alleyway rather than through the gardens would resolve the second associated anomaly. Upgrading the footpath to a bridleway would decrease the legally applicable travelling distance to the recreation ground by between 150 – 600 metres depending on starting point which would be especially convenient for younger children on bicycles who can use the recreation ground as a safe off-road area to ride around.
20. Toddington Parish Council has indicated that as part of its nascent Neighbourhood Plan the recreation ground should be accessible from Kimberwell Close/ Bradford Way by cyclists.
21. The creation of a bridleway over the alleyway between points F-G is unlikely to detrimentally impact the owners of the adjoining properties, although the privacy of No. 19 Kimberwell Close could be affected as horse riders could look over the 1.8 metre high close-boarded fence around this property's rear garden. The creation of the bridleway over the recreation ground between points A-B-E is supported by the parish council, which owns the land, as it is situated in a better position than the current footpath. The creation of a bridleway between points B-F would have little impact on the owners of No. 19 Bradford Road as the bridleway would only impinge on a currently overgrown and unused portion of this garden. High vegetation here means that privacy and security would not be affected by the bridleway.
22. The new bridleway would, however, adversely affect Nos. 15 and 17 Bradford Road as the bridleway would run the full width of the rear gardens to a depth of approximately 1.5 – 1.8 metres each side of the current rear fences. However, this imposition should be weighed against the fact that the current legal line of Footpath No. 58 already runs within the rear gardens of these two properties,

albeit in an unlawfully obstructed form. To mitigate against the decrease in privacy the Council would provide 1.8 metre high panel fencing to separate the bridleway from the gardens of Nos. 15, 17 and 19 Bradford Road.

23. The Council must consider the provisions of Section 28 of the Act with regard to statutory compensation for any person who owns or who has a legal interest in land which is the subject of a public path order and who has a right to claim<sup>1</sup> compensation where:

- Their value of an interest has been depreciated or
- Where they have suffered damage by being disturbed in their enjoyment of the land

in consequence of the coming into operation of a public path order (here the creation of a new bridleway). Any compensation for loss or damage needs to be balanced against the gain from having the existing footpath stopped up.

24. The current footpath does not have a legally defined width but as a minimum it can be assumed to be 4 feet (1.2 metres wide). The width of the new bridleway through the gardens would have a width of 3 metres. The difference in width can be taken as the factor which governs the level of statutory compensation value as shown in the table below.

Garden	Length / area of footpath (A <sub>F</sub> )	Length / area of bridleway (A <sub>B</sub> )	Approx. value (A <sub>B</sub> )-(A <sub>F</sub> ) × *£5 m <sup>-2</sup>
No. 15	~13.1 m / 15.7 m <sup>2</sup>	~3.8 m / ~5.4 m <sup>2</sup>	zero as less area
No. 17	~13.6 m / 16.3 m <sup>2</sup>	~15 m / ~45 m <sup>2</sup>	~£145
No. 19	~1.3 m / 1.6 m <sup>2</sup>	~1.3 m / ~3.9 m <sup>2</sup>	~£12
<i>*Based on an estimated compensatory value of £5 m<sup>-2</sup></i>			

25. By way of compensation the Council will offer to supply and install 1.8 metre panel fencing to separate the bridleway from the remainder of the rear gardens in lieu of any financial payment.
26. In addition to the statutory compensation, any damage to property would need to be compensated. However, in the case of the removal of the apple tree at the rear of the garden of No. 17, this loss needs to be balanced against the fact that it already obstructs the legal line of the footpath and thus is already subject to its lawful removal. By way of compensation for the loss of fruit the Council will offer to provide two replacement young trees at a combined cost of between £40 and £70.
27. Before making any order, the Council must also consider the effect of the order on the needs of agriculture, forestry and the desirability of conserving flora, fauna, and geological and physiographical features and any material considerations within its Outdoor Access Improvement Plan. The new bridleway

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<sup>1</sup> Subject to Section 28 of the Highways Act 1980 and The Public Path Orders Regulations 1993 S.I. 1993 No. 11.

would require the trimming back of approximately 115 metres of overgrown hedgerow between points B-E and the cutting back of general bramble and brush between points B-F, the removal of the limb of an ash tree, and the felling of a large leylandii and a structurally unsound mature apple tree. The Council's Highways Tree Officer has supported this level of work. The clearance and erection of fencing would impinge upon the local habitat of a nearby badger sett; however, the Council's Countryside Service's ecologist has no concerns about the impact on the badgers from this work.

28. The Council's Outdoor Access Improvement Plan, and in particular the Connecting Spaces chapter, seeks to improve bridleway connectivity, connect local spaces, legally recognise cycle routes and provide routes that can be utilised as part of healthy living and as access to open spaces. The proposed creation of the new bridleway will meet all these objectives.
29. When all the above factors are considered, it is expedient for the Council to make an order to create a new bridleway between points A-E-B-F-G.

### **Options for Consideration**

30. Members of the public currently utilise an alternative route which passes along the alleyway between points F-G before cutting through a boundary hedge into the adjoining arable field. The walked route then passes along the edge of the crop and through another gap cut in the hedge into the adjoining parish council-owned recreation ground (see Appendix C). The owner of the arable field has stated that he does not want the legal route of the footpath moved onto his land. He has also stated that in the past he has erected obstructions to prevent use and that these have all been removed. Photographic evidence suggests that the current walked route has only been available since sometime after mid-2006. The lack of a long-lived alternative route and the stated actions of the owner of the land would prevent the Council from deeming that the walked route had been dedicated as a public footpath. Even if it could be demonstrated this route was an alternative footpath in the context of requiring a modification order under Section 53 of the Wildlife and Countryside Act 1981, it does not mean that the currently obstructed route of Toddington Footpath No. 58 has been legally extinguished. The legal line of Footpath No. 58 can only be stopped up by a confirmed extinguishment order.
31. The option of creating the new bridleway around the edge of the arable field, rather than through the gardens of Nos. 15, 17 and 19 Bradford Road has been considered but has been discounted due to the owner of the field not wanting to accommodate the bridleway on his land, which currently has no public right of way recorded over it, and because such an action would be in the interests of the obstructing owners, rather than in the interests of the public and recipient land owner and is therefore likely to fall foul of the *Send* judgment described in Paragraph 12 above.

## Consultations

32. The owners of Nos. 5, 7, 9, 11, 13, 15, 17 and 19 Bradford Road have been consulted on both the original 2015 proposal and on the modified 2017 proposal the proposal. Only the owner of No. 15 responded.
33. The owner of No. 15 Bradford Road (Mr. Holmes) has frequently e-mailed this report's author (Adam Maciejewski) about the issue of Footpath No. 58 and has commented on a variety of issues. In Mr. Holmes' main response, dated 11 December 2017, he stated:
  - i. *"...Whilst we are inherently opposed to the concept of effectively losing our land, Adam has made efforts to push this footpath to the end of our gardens by requesting the route be moved or extinguished and re-located and re-created on the definitive map. We support the prospect of moving the footpath as far off our land as is possible and if this is the best the council can offer in respect of this, then we fully support it and will cooperate in the process..."*
  - ii. *...However, it is clear from Adam's proposal that there is approximately 1 meter [sic] of land on the other side of our rear fence which would be utilised in this proposition, used to 'upgrade' the path to a bridal way [sic]. It would greatly lessen the impact of this intrusion into our land and family lives if rather than upgrading the foot path to a bridal way [sic] (requiring a wider path), the space behind our fence is utilised with a view to establish simply a footpath, and not a bridal way [sic]. This would result in a far lesser intrusion into our land of perhaps only 1 meter [sic] rather than 2 and equally would minimise the impact on our human rights (Article 8, the right to peaceful enjoyment of a private family life). I would strongly urge this variation on the proposition be considered and would be very eager to understand the full rationale behind any decision made in respect of it..."*
  - iii. *...I request the council employ full responsibility for maintenance of any footpath or bridal way [sic] surface and boarders which are established, for the boundary fence which is erected to protect our family and property and to fully accept under their current insurances, any and all public liability issues over the footpath and fencing. Put simply, we do not wish to take on any expense or responsibility in relation to the maintenance of the footpath/ bridal way [sic] or the fence, which, being subject to far more foot traffic, may well become damaged and worn at an accelerated rate..."*
  - iv. *As a public authority, I must remind you that your duty is to remain objective. You must consider necessity and be proportionate in your actions and decisions, with full consideration to the impact you have on the lives of members of your communities.*
  - v. *Whilst I understand that the public must be allowed access to the public open space behind our home, there is a foot path already in place behind our home, used daily by the locals for a period of over 20 years. The public already have access. If your objective is to achieve public access, then it is already achieved and there is absolutely no need to disrupt members of your community in such an intrusive and appalling way..."*

- vi. *...I question the decision to force the development of a foot path [sic] through resident's gardens when a path is already in existence and has been for many years. During a time when budgets have been stripped back in the public sector, the concept of undertaking such unnecessary, extensive work at public expense is nonsensical. It is unnecessary intrusion into our private lives and at direct detriment to the value of our homes...*
- vii. *...Residents who have lived in the estate for many years evidence that the pathway running through the farmers land, photographed above, has been in place and in regular use for a period in excess of 20 years without obstruction or limitation such as gates, fences or "private land" signs. This has been in a continuous state of permissive access. I apply to the council and local authority to make a modification order under S.53 of the Wildlife and Countryside Act 1981 to officially adopt the line of the foot path in position where it has been for over 20 years as is illustrated above. This legislation states it is the duty of the local authority to constantly review the definitive map and adjust it accordingly..."*
- viii. *...Should the council wish to upgrade the foot path [sic] to a bridal way [sic] and run this bridal way [sic] through our gardens, the space required from our gardens would be even greater. Whilst maintaining as argued above, that this path is not in, nor has ever been in physical existence, the council does not have my consent to expand any supposed foot path [sic] to a greater width required for a foot path [sic] in order to accommodate a bridal way [sic] where I see no reason or explanation for its necessity. This would clearly require more of my land to be taken. One could go so far as to suggest unnecessary expansion from a footpath to a bridal way [sic] over my land, causing loss to my land, could be seen as Theft of Land...*
- ix. *...15 Bradford Road was purchased from the council in 2002. Since this time it has been privately owned for 15 years. The law states that if the land has been occupied for 10-12 years, the rights of the land may pass to the occupier. On this basis I apply for these rights on the basis on adverse possession of the land and any claim to the land or easement upon it made by the local authority...*

34. In response to Mr Holmes' comments:

- i. The report's author has liaised as much as possible with Mr. Holmes about the route of the proposed bridleway and the issues involved in stopping up the current footpath, creating the new bridleway and potentially claiming the walked route as an additional right of way.
- ii. It would be possible to fit most of the width of a new footpath into the gap behind the rear garden fences but this would not solve the mismatch in status with the connecting section of Bridleway No. 58 nor provide legal access for cyclists to the recreation ground from the Kimberwell Close area. The issues considered under the Human Rights Act have to be balanced against the primary legislation of the Highways Act 1980 which imposes on the Council a legal duty to assert and protect the rights of the public to use the public footpath unlawfully (and unwittingly) obstructed by Mr Holmes and the previous owners of his home.

- iii. Under the Highways Act 1980, the new bridleway (including the surface) would become maintainable at the public expense. However, the Council would not be liable to maintain the adjacent fencing panels given to the landowners by way of compensation as these would not be on the highway.
  - iv. The council has the option of opening the existing footpath up through the various gardens. However, where an alternative route exists which doesn't involve a third party and which provides a benefit for users, the Council can choose this option if it does not undermine public use. Unfortunately for the owners of Nos. 15, 17 and 19 the new route cannot be moved onto Council land and so it is proposed to move it as close to the properties' edges as is possible.
  - v. The Council would fail in its duty to assert and protect the rights of the public to use Footpath No. 58 if landowners could force the route onto a third-party's land simply by blocking the footpath.
  - vi. (and vii) A walked route does exist in the adjoining farmer's field. This is due to the legal line of the footpath being unlawfully obstructed by several garden fences. Based on preliminary inquiries, it appears that the farmer has in the past tried to prevent use of the route by erecting barriers which have been removed. Additionally, photographs and other residents' comments indicate that the walked route has not been in existence and usable for 20 years. Consequently, the Council could not deem that the walked routes had been dedicated as a public right of way and therefore this is **not** an existing legal alternative to the obstructed section of Footpath No. 58.
  - vii. Mr. Holmes was invited to apply for a modification order to record the walked route as a public right of way but has declined to do so.
  - viii. The width of the proposed bridleway would be 4 metres except for where it runs through the rear gardens of Nos. 15, 17 and 19: here it would have a reduced width of 3 metres for a short length (approximately 20 metres). This reduces the impact on the gardens' owners – especially as approximately 1.5 – 1.8 metres of the bridleway will be situated on the dead ground behind the rear fences to these gardens. Consequently, the gardens will only have approximately the same width of public right of way within the currently fenced in area as currently is affected by the obstructed footpath.
  - ix. Ownership of the land is a separate issue to the existence of any public right of way over that land. The land fenced in by Mr Holmes is already within his land title and so he already owns it and consequently cannot take adverse possession of it. Moreover, one cannot adversely possess highway land.
35. The owner of No. 17 Bradford Road (Mrs. Goodwin) responded to a request by the report author for a site visit in an e-mail, dated 3 October 2017 to state: *“...I reiterate I have lived at this property for nearly 23 years, purchasing the property under the Right to Buy Scheme in 2013. I have never been aware of any Public Right of Way over my property and none of the searches or correspondence that was completed during my acquisition of the property revealed any rights...”*. In a telephone call, also on 3 October 2017, Mrs Goodwin stated that she has lived at the property for about 23 years and has never been asked by anybody

to use the route of the FP through her garden. She rented the property for many years then exercised her Right-to-Buy in c.2013. She only became aware of the existence of the footpath due to the report author's letter. Mrs Goodwin is very much opposed to a bridleway along the bottom of her garden – indeed she is opposed to any public right of way through her garden.

36. In response, the issue of being unaware of a public right of way through her property neither releases Mrs Goodwin of the requirement to not obstruct the footpath nor does it diminish the footpath's existence in law. Any dissatisfaction that Mrs Goodwin has with the fact she bought a property crossed by a right of way should be directed at her conveyancing solicitors and the vendors (Central Bedfordshire Council Assets Team).
37. Mr McIntosh lives on Bradford Road but is not directly affected by either the existing footpath or proposed bridleway. He is more concerned about how the parish council's recreation ground will be used and the sporadic issue of motorcyclists (and off-road buggies) using the recreation ground. He feels that the provision of a bridleway would prevent restrictive structures being installed to deter motorcycle access from the Kimberwell Close and Bradford Road areas. If a bridleway is created, any access structures must permit the passage of walkers, mobility scooters, bicycles and horses. The physical prevention of unlawful motorcycle activity on bridleways is very difficult as motorcycles can go anywhere where a horse can go and structure cannot be installed which prevents access to the bridleway by those classes of traffic that are entitled to use it.
38. Mr Knight of Crowbush Farm has also commented on the unlawful use of motorcycles on the parish council's recreation ground and in the adjoining arable field. Indeed, Mr Knight erected wooden staggered barriers without authorisation about ten years ago on the nearby Footpath No. 6 to prevent motorcycles accessing the recreation ground. The removal of these structures has yet to be addressed. The unlawful use of the walked route by motorcycles is an issue for the Police to address.
39. Mr Wood owns the arable field over which the public currently walk to the south of point F to avoid the obstructed section of Footpath No. 58. In a letter, dated 17 October 2015, he responded to a query about allowing a bridleway to be created over his land, stating:

*"...If I had blocked a footpath I would have been issued a notice to clear the obstruction within 28 days and you would have taken me to court if I had not complied. I would suggest you contact the property owners where the footpath goes and give them notice to clear the footpath and put clear signage up. As for your comment, a new route has been used for many years I would like to point out that fences have been erected over the years to prevent access onto my land but have been removed completely. As you have failed to keep the original footpath clear it has encouraged the public to enter my property illegally which I have discouraged, and you are actively encouraging the public to enter my land by not maintaining the original footpath..."*

*...I will be looking for compensation if this action goes ahead as it will affect my farming activity's. [sic] I will be contacting my M.P and asking the Question why is there one rule for farmers and one rule for house owners*

*when it comes to public right of ways. I am now giving you notice to stop encouraging the public to enter onto my land by not keeping a public footpath open and for the council to clearly sign post the foot path [sic]...*

40. In response – the Council does use its discretion more widely when dealing with historically objected rights of way through residential properties due to the increased privacy and security issues. However, the law applies equally to residential gardens and farmland and, in this case, it appears that the Council’s discretion to seek alternative solutions is constrained by previous court judgments. As the Council is currently looking at not utilising Mr Woods’ land for the alternative route he has postponed taking any further action until the current proposal has run its course.
41. The Chilterns Society was consulted and the Rights of Way Group responded by e-mail, dated 15 December 2017, stating, “...*We are all agreed that this is a good proposal and the Chiltern Society is very happy to support it...*”
42. The Ramblers were consulted but has not responded.
43. The British Horse Society was consulted and a Bridleways Access Officer commented in an e-mail, dated 11 December 2017, that the section of Footpath No. 58 is on the local horse riders’ aspiration map and so supports the proposal.
44. The Toddington P3 Group has commented on the proposal by e-mail, dated 28 December 2017, stating, “...*I fully support your proposed approach. Opening up this route will enable a legal access to this recreation area. The recreation area is close to housing and, subject to suitable surface, will enable access to less able bodied users, including those in mobility scooters, forming useful short circular routes. As we have discussed over many years this route is formally obstructed. An informal route has been established through the adjacent field. In recent years the recreational usage of the Crowbush field has increased as it has been formally established for recreational purposes. The need for non-motorised user access along this route has increased. ...*”
45. The Bedfordshire and Luton Joint Local Access Forum was consulted and commented in an e-mail, dated 8 December 2017, that the proposal looked reasonable.
46. Toddington Parish Council has been kept fully informed of this proposal with the report author attending parish council meetings and site visits. The Minutes of the 11 July 2017 full parish council meeting state:

*“...It was **resolved** to request a new proposal which would allow for a new public bridleway, where a need has been highlighted through the neighbourhood plan process as an area that needs improving. The current definitive map shows the path going through 9 houses, ideally a new diversion could go through a small part of a local land owner, but this land owner has been contacted, but insisted that this is not an option. To minimise the number of houses that would be affected by this new creation the path would still need to go through 3 gardens. Both Councils appreciate this is not an ideal option but under the Highways Act 1980 this is the most appropriate and correct legal route to follow. The new diversion would also affect Parish Council Land at Crowbush: instead of the current definitive*

*route of the footpath going through the field the new route of the bridleway would be created around the edge of our land..."*

47. In response - the parish council supports the current proposal whilst recognising that the bridleway would still affect three homeowners.
48. Central Bedfordshire Council's Housing Services and Assets teams were consulted but neither has commented on the proposal.
49. The local ward members, Cllr. Norman Costin and Cllr. Tom Nicols were consulted. Cllr. Nicols fully supports the proposal, having attended a site visit to view the situation for himself.
50. The statutory undertakers were consulted in December 2017. Cadent Gas and National Grid have stated they have no objection to the proposal. British Telecom have no objection to the proposal and Anglian water have no objection to the stopping up of the footpath but the bridleway creation could marginally affect its nearby water main. UK Power Networks did not respond.

### **Reasons for Decision**

51. Toddington Footpath No. 58 has been obstructed by the rear garden fences of Nos. 5-19 Bradford Road since these properties were built. The footpath connects to a bridleway to the southeast which is a legal dead-end for horses and cyclists. This proposal seeks to resolve both issues by stopping up the obstructed section of footpath and creating a roughly parallel bridleway. Three of the properties (Nos. 15, 17 and 19 Bradford Road) would still have a bridleway within their back garden but this would be located behind a new rear garden fence provided by the Council.
52. The Council has investigated alternative routes for the new bridleway but these would mean putting the bridleway onto third-party land which, whilst currently used as the walked alternative route of the footpath, does not currently have any public right of way recorded over it. The owner of the third-party land, an arable field, does not want the bridleway created over it. Such an action could fall foul of case law (the *Send* case) which confirmed that Highways Authorities must act in the interests of the users and not the homeowners who are obstructing the current footpath.

### **Council Priorities**

53. The proposal will meet the following Council's priorities:
  - Enhancing Central Bedfordshire
  - Protecting the vulnerable, promoting wellbeing
  - Creating stronger communities
  - An efficient and responsive Council

by resolving the issues of a long-lived obstruction on a footpath and by connecting a dead-end bridleway to Kimberwell Close. This will allow a wider variety of users to easily and safely access the parish council's recreation ground from the Kimberwell Close / Bradford Road area.

## Corporate Implications

### Legal Implications

54. The Highways Act 1980 empowers Central Bedfordshire Council, as the local Highway Authority, to stop up and create public rights of way. Any order made must be advertised and anybody disaffected with the order can object to it during the statutory objection period. If an order receives objections and these are not withdrawn, the order cannot be confirmed by the Council as an unopposed order but would need to be forwarded to the Secretary of State for Environment, Food and Rural Affairs who appoints an independent Inspector to look at the objections and the order, and to hold a public hearing or inquiry, if necessary, to determine the order. The Inspector can confirm, modify or not confirm the order. In the current case, the proposed extinguishment of the footpath will be made concurrently with the proposed creation of the bridleway: both orders will either be confirmed or not confirmed. If the orders are not confirmed, the Council will have to consider whether it would then become appropriate to enforce the legal line of the footpath through some or all of the affected properties.

### Financial Implications

55. This proposal is part of the Council's anomalies resolution programme and so all costs will be borne by the Council: more specifically by the Highways Team revenue budget (RoW General) over the years 18/19 and 19/20. The costs (see table below) include; the advertising of two orders twice (approximately £600); works including: vegetation clearance, felling, surfacing and fencing (£2000); and compensation (£230). In addition, there may be legal costs relating to dealing with any opposed orders and the claims for compensation. These are envisaged to total at most £2000, with any internal LGSS Law costs being absorbed into the corporate legal budget. If any objections are made and not withdrawn the matter may be determined by way of written representations or a public hearing or inquiry the latter of which could require some degree of legal advice from LGSS Law and the hire of a venue. These costs are summarised in the table below:

<b>Expense</b>	<b>Amount</b>
Advertising	£600
Works	£2000
Compensation	£230
Legal and valuation fees	£2000
Public hearing costs and venue hire	£500
<b>Total</b>	<b>£5320</b>

## **Equalities Implications**

56. Toddington Footpath No. 58 is currently unlawfully obstructed by a number of garden fences. The Council, under its legal duty to assert and protect the public's right to use the footpath, could take enforcement action to seek the removal of these fences and any obstructing vegetation and features within the gardens. However, most of the route can be moved to the adjoining paved alleyway (between points F-G) which is wider and has an all-weather surface. The connecting section B-F) would have an aggregate surface providing ease of use up to the edge of the parish council's recreation ground which is level mown grass. This would benefit all classes of users, especially those with mobility issues.
57. A short section of the proposed bridleway would pass across the rear of the gardens of Nos. 15, 17 and 19. Mr Holmes of No. 15 has raised the issue of privacy and security under the Human Rights Act. However, there already exists a public right of way across these properties and so any impact from the new bridleway must be weighed against the fact that the public already have a legal right of access across these premises along with the current interference in the rights of the public to use a public highway.
58. The option of moving the footpath (or bridleway) onto the nearby arable field would affect a third-party landowner not currently effected by a public right of way. The imposition of a right of way on an unwilling third party to obviate the legal obligation of residents not to obstruct a public footpath is both unreasonable and against the judgment in the *Send* case.

## **Community Safety Implications**

59. The Council has a statutory duty under the Crime and Disorder Act 1998 to consider the community safety implications that may result from making the decision set out in the report. Currently the Footpath No. 58 is obstructed, forcing walkers to utilise an *ad hoc* track through hedges and farmland which is neither surfaced nor provides clear views. The provision of a new bridleway will enable users to use a dedicated surfaced route which avoids farmland. It will also be fenced out of residents' gardens rather than running within them as the footpath currently does.

## **Conclusion and Next Steps**

60. Toddington Footpath No. 58 is obstructed by several garden fences to the rear of Nos. 5 – 19 Bradford Road. It also connects to a bridleway which is a legal dead-end for equestrians and cyclists.
61. The proposed stopping up of the obstructed section of footpath and creation of a nearby bridleway would resolve both the above issues. Space constraints require that, in order not to affect third-party land, the new bridleway would run across the bottoms of the gardens of Nos. 15, 17 and 19 Bradford Road.

## **Appendices**

Appendix A - Plan of proposal

Appendix B - Badger survey

Appendix C - Photographs of the routes