

Legal and Policy Considerations

1. The dualling of the A421 is being carried out by Central Bedfordshire Council under Section 62 of the Highways Act 1980 (*“the 1980 Act”*) under its general power of improvement, rather than by any statutory provision contained within a Side Roads Order or a Development Control Order made under Section 14 of the 1980 Act or under the Planning Act 2008 respectively, or under any provisions within the Town and Country Planning Act 1990. Consequently, the Council’s power to create, stop up and divert public rights of way is limited primarily to Sections 26, 118 and 119 of the 1980 Act respectively. The Council could alternatively apply to the Magistrates’ Court under Section 116 of the 1980 Act or make an order under Section 14 of the 1980 Act if the affected section of the A421 is a classified or principal road. These alternatives have been discounted for the reasons given at Paragraphs 20 to 22 below.

Creation of public paths under Section 26

2. Section 26 of the Highways Act 1980 gives Central Bedfordshire Council, as the Highway Authority for Central Bedfordshire, the discretionary power to create public footpaths, bridleways and restricted byways.
3. The Council can make and confirm an order where it considers there is a need for a footpath or bridleway and they are satisfied, having regard to the extent to which the path or way would add to the convenience or enjoyment of the public and the effect of the creation on the rights of persons with an interest in the land, that it is expedient that the path or way should be created.
4. The creation of a new 3 metre-wide footpath/cycleway alongside the southern highway boundary of the dualled A421 between points T-B-U-V-W-X-Y (see plan at Appendix 1) would connect all the affected paths via the new bridleway bridge and provide a conduit for future sustainable transport connectivity between the employment centres at Magna Park, Eagle Farm, Milton Keynes and ProLogis Park, Marston Gate, Ridgmont.
5. This footpath/cycleway is being created within the margins of the land bought by Central Bedfordshire Council for highway purposes and thus would not impinge on other landowner’s rights or interests. The creation of the route as a public footpath under Section 26 of the 1980 Act will:
 - a. Provide an easily identifiable route recorded on the Definitive Map and Statement as a public right of way
 - b. Enable a route to be shown on future Ordnance Survey maps as a public right of way
 - c. Enable the route so created to be considered as mitigation/an alternative route under Section 118 of the 1980 Act.
 - d. Give additional protection to its continued maintenance
6. Not recording the route as a public right of way would prejudice the public by not having it highlighted on maps as part of the local public rights of way

network and would prejudice the successful stopping up of the adjacent footpaths.

7. The Council must have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. The creation of the footpath will be in land already bought for highway use and will run either at the top of a cutting or base of an embankment or at the level of the main carriageway depending on precise location on land that has been engineered as part of the dualling scheme. Consequently, the creation will have no effect on farming, forestry or conservation issues.
8. The Council also must have regard to any material consideration within the Council's Outdoor access Improvement Plan. The creation of the footpath and cycleway would provide increased east-west connectivity both for pedestrians and cyclists along the A421 corridor.

Stopping up of public paths under Section 118

9. Section 118 of the Highways Act 1980 enables the Council to extinguish public footpaths, bridleways, and restricted byways.
10. Before making an extinguishment order under Section 118, the Council must be satisfied that it is expedient to do so because the path is no longer needed for public use. In considering whether it is needed and whether it would be used, any temporary obstructions must be disregarded. In considering whether any route can be stopped up, the Council (and Secretary of State) can have regard to the concurrent creation or diversion of an alternative route under sections 26 and 119 of the 1980 Act in considering whether the route to be stopped up is needed and the extent to which it would be used if retained.
11. Whilst all the affected footpaths are open and available for public use, it is clear from recent surveys that some of the footpaths are used less than others, or potentially not at all, as discussed in the table at Paragraph 14 of the main report.

Path No.	Observations and comments
Aspley Guise FP 1 Points A-B (Appendix 2)	<p>The section of footpath between points A-B links the generally east-south-east - west-north-west route of Aspley Guise Footpaths Nos. 14 and 1 (in Hulcote & Salford) on the north side of the motorway with the sections of Aspley Guise Footpaths Nos. 1 and 11 on the south side of the A421. There is no evidence that this route is used extensively but some use does occur.</p> <p>This footpath crosses the proposed to be dualled A421 at grade and it is considered that, due to increased traffic volume and vehicle speed, this will be hazardous for users. Consequently, it is expedient for the council to seek its extinguishment.</p> <p>This footpath forms the principle pedestrian connection between the rights of way to the east of Salford with the</p>

	<p>rights of way network in the Wavendon, Milton Keynes, area. As such, this route is probably desired as a network connection. However, the provision of a new link on the south side of the A421 between Aspley Guise Footpath No. 1 and Aspley Guise Bridleway No. 25 would provide an as convenient traffic-free alternative. This would be surfaced rather than grassed but would be slightly longer between Hulcote & Salford Bridleway No. 2 and Aspley Guise Footpath No. 11 at approximately 810 metres compared to the current 650 metres via Footpath No. 1.</p> <p>Consequently, an order to stop up this section of footpath can be made.</p>
<p>Aspley Guise FP 2 Points C-G (Appendix 3)</p>	<p>The section of footpath between points C-G runs parallel to the A421 through a wooded spinney and appears unused as the current Bridleway No. 25 provides more convenient access to the A421.</p> <p>It is not needed by the public as it is subsumed within the wider A421 highway boundary.</p> <p>Moreover, this footpath crosses the proposed to be dualled A421 at grade and it is considered that, due to increased traffic volume and vehicle speed, this will be hazardous for users. Consequently, it is expedient for the council to seek its extinguishment.</p> <p>Consequently, an order to stop up this section of footpath can be made.</p>
<p>Hulcote & Salford FP 10 Points J-K (Appendix 4)</p>	<p>The only evidence of recent use of the footpath between points J-K is by vehicles (possibly quadbikes) accessing the M1 motorway widening works via the overbridge. Otherwise, the rest of the footpath appears completely unused as the vegetation along the route is undisturbed apart from a narrow deer track that follows the edge of the ditch alongside the footpath.</p> <p>This footpath crosses the proposed to be dualled A421 at grade and it is considered that, due to increased traffic volume and vehicle speed, this will be hazardous for users. Consequently, it is expedient for the council to seek its extinguishment.</p> <p>The route as a whole, when considered with Aspley Guise Footpaths Nos. 32 and 34 and Husborne Crawley Footpath No. 6, starts on Salford Road, Salford and ends on Bedford Road, Husborne Crawley near to Church End. The route does not appear to serve any apparent purpose or to connect areas of housing or places of interest. There does appear to be some use (possibly dog walking) of the unaffected connecting footpaths to the south side of the</p>

	<p>A421 but this use does not extend to the north side of the A421.</p> <p>This footpath provides the only pedestrian crossing of the M1 motorway for a 2.4 km section of its length: the next crossing to the west being Aspley Guise Bridleway No. 25 and the next crossing to the east being Husborne Crawley Footpath No. 10 (which leads to Ridgmont railway station).</p> <p>The footpath provides the only indirect link to Husborne Crawley Bridleways Nos. 13 and 20 via Salford Road which, in turn, leads to a bridleway network north of Brogborough on either side of the already dualled A421 (see network plan at Appendix 5). However, access to Footpath No. 10 is currently only via Husborne Crawley Footpath No. 6 from Church End. Access to the aforementioned bridleway network is therefore more direct via Husborne Crawley Footpath No. 10 or Aspley Guise Footpaths Nos. 12, 2 and Bridleways Nos. 25 and 2 from Church End and Aspley Guise respectively.</p> <p>There is no nearby public right of way that would serve as a usable alternative if this footpath (along with Aspley Guise Footpath No. 32) were stopped up. However, based on the level of use and the fact that the route does not serve any apparent purpose, it would appear that Footpath No. 10 is not needed for public use despite the lack of nearby alternative public paths crossing the M1 motorway.</p> <p>Consequently, an order to stop up this section of footpath can be made.</p>
<p>Aspley Guise FP 32 Points K-L (Appendix 4)</p>	<p>Half of the section of this footpath between points K-L is lost within the trees and scrub adjoining the northern side of the A421. The remainder of the route passes along a partially grassed-over aggregate path and then up a flight of decrepit steps to then run along an overbridge across the M1 motorway. The only sign of use is by vehicles possibly servicing the M1 widening works.</p> <p>This footpath crosses the proposed to be dualled A421 at grade and it is considered that, due to increased traffic volume and vehicle speed, this will be hazardous for users. Consequently, it is expedient for the council to seek its extinguishment.</p> <p>Again, as part of the north-south route between Salford Road, Salford and Bedford Road, Husborne Crawley, this route appears to have little current purpose and is not needed for public use.</p> <p>Consequently, an order to stop up this section of footpath can be made.</p>

12. Before the Council confirms a public path extinguishment order, it must consider it expedient to do so, having regard to the likely level of use the footpath would have if not extinguished or obstructed. The Council must also consider the effect of the extinguishment on the land served by the path.

Path No.	Observations and comments
<p>Aspley Guise FP 1 Points A-B</p>	<p>The footpath appears utilised to a limited degree and provides a direct pedestrian link between the hamlet at Aspley Hall to the north of the motorway and Cranfield Road to the south of the motorway: this route is approximately 1.1 km long. Currently two alternative, but longer, routes already exist utilising Aspley Guise Footpaths Nos. 11 and 14 or Aspley Guise Bridleways Nos. 2 and 25 and then Footpaths Nos. 11 and 1. The diversion of Bridleway No. 25 and the provision of a new bridleway bridge and the creation of Aspley Guise Footpath No. 35 will provide a traffic-free route approximately 1.25 km long. People walking any other routes are likely to either utilise the Cranfield Road overbridge or the new bridleway bridge and consequently the current route would be little used if retained.</p> <p>The stopping up of the footpath would not detrimentally affect the land served by the footpath to either side. Removal of the footpath would also enable Highways England to reduce their infrastructure liability and give it the option of removing the occupation bridge over the motorway (see Paragraph 30 of the main report).</p> <p>Consequently, an order to stop up this section of footpath can be confirmed, and it is expedient to do so.</p>
<p>Aspley Guise FP 2 Points C-G</p>	<p>The section of footpath to be stopped up between points C-G is not used, with users using the bridleway ramp down to the A421 in preference. Walkers then cross the A421 at grade and walk along the westbound verge to access the remainder of Footpath No. 2.</p> <p>The provision of the new bridleway overbridge at this location will provide a natural traffic-free conduit for walkers making the section of footpath C-G redundant and unused if retained.</p> <p>Stopping up of this section of footpath (which is within highway waste) would remove the Council's obligation to keep it free of vegetation and thus would enhance the preservation of flora and fauna in the area.</p> <p>Consequently, an order to stop up this section of footpath can be confirmed, and it is expedient to do so.</p>

<p>Hulcote & Salford FP 10 Points J-K</p>	<p>Despite this footpath being the only pedestrian crossing of the M1 motorway for a 2.4 km section of its length, it appears unused. Once the creation of the nearby footpath/cycleway is completed there is a possibility that this footpath would be used more than it currently is. However, this level of use is estimated to still be relatively low.</p> <p>Stopping up the footpath would also free up the land for use by the landowners. Removal of the footpath would also enable Highways England to reduce their infrastructure liability and give it the option of removing the occupation bridge over the motorway (see Paragraph 30 of the main report). Consequently, an order to stop up this section of footpath can be confirmed, and it would be expedient to do so.</p>
<p>Aspley Guise FP 32 Points K-L</p>	<p>This footpath is the southern continuation of Footpath No. 10 on the south side of the M1 motorway and the same comments and considerations apply.</p> <p>Consequently, an order to stop up this section of footpath can be confirmed, and it would be expedient to do so.</p>

13. The Council must have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. The above paths to be stopped up cross either highway land, hard surfaced tracks/bridges or pass through what is currently agricultural wasteland. Consequently, the stopping up would have no material effect on these concerns.
14. The Council also must have regard to any material consideration within the Council's Outdoor access Improvement Plan. This proposal would not have any material effect.

Diversion of public paths under Section 119

15. Section 119 of the Highways Act 1980 gives Central Bedfordshire Council, as the Highway Authority for Central Bedfordshire, the discretionary power to divert public footpaths, bridleways and restricted byways.
16. Before making a diversion order the Council must be satisfied that it is expedient to do so in the interests of the owner, lessee or occupier of the land crossed by the path or in the interests of the public. The Council must also 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.

Path number	Observations and comments
<p>Aspley Guise Bridleway No. 25</p>	<p>The diversion of the bridleway from points C-D and E-F to a new line C-V-F is expedient as it would be routed via a new bridleway bridge over the dualled A421. The</p>

<p>Points C-D-E-F to points C-V-F (Appendix 3)</p>	<p>diversion is therefore in the interests of the public as it would mean that users did not have to cross the dual carriageway at grade. As the bridleway is bisected by the A421 there are two pairs of termination points: the termination points at C and F would remain unchanged; and the termination points at D and E would disappear as the bridleway would continue across the new bridleway bridge without intersecting the carriageway below. The length of the diversion would be slightly longer than the current route, at approximately 319 metres compared to 299 metres.</p> <p>Consequently, an order could be made to divert this section of bridleway.</p>
<p>Aspley Guise Footpath No. 2 Points I-H to points I-X (Appendix 3)</p>	<p>The diversion of this section of footpath from points I-H to I-X will facilitate connection to the new Footpath No. 35 at the level rather than down the side of a cutting – thus reducing the need for a ramp or steps. The Council considers the diversion to be expedient in this context and in the interests of the public. The new termination point (point X) would be on the proposed Footpath No. 53 and lies approximately 95 metres to the south-east of the current termination point (point H) which would be within the new carriageway. The diversion would, however, add approximately 107 metres to the length of the route if users are intending to connect with the new bridleway bridge. Conversely, the diversion would shorten the distance of those walking eastwards towards Husborne Crawley Footpath No. 6 (to the east of point Z) by approximately 95 metres.</p> <p>Consequently, on balance, an order could be made to divert this section of footpath.</p>

17. Before confirming an 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 Council must also be satisfied that the order is in the interests of those named in the order (in this case the public) and 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.

Path number	Observations and comments
<p>Aspley Guise Bridleway No. 25 Points C-D-E-F to</p>	<p>The proposed diversion route of the bridleway (C-V-F) will be a generally level route via a new bridge over the dualled A421. The route is approximately the same length and will be a much safer route, due to avoiding conflict with high speed vehicles and will reduce travel time by potentially 5 minutes each way at peak times due to not</p>

points C-V-F	<p>having to wait for a suitable gap in the traffic to cross. The land is owned by the Council and held for highways purposes.</p> <p>It would therefore be expedient to confirm the order made in the interests of the public.</p>
Aspley Guise Footpath No. 2 Points I-H to points I-X	<p>The proposed diversion route (X-I) avoids a proposed earth embankment alongside the A421 and would connect to the proposed new footpath/cycleway (Footpath No. 35) at the level. The new footpath would cross similar land to that currently crossed by the footpath (an arable field) with distances of approximately 90 metres and 107 metres respectively for G-I and I-X. The land is not owned by the Council and the owner would be eligible for statutory compensation if they chose to claim it. The difference in path length, 17 metres, across the field is relatively minor and would not unduly affect the farming activities on the land.</p> <p>It would therefore be expedient to confirm the order made in the interests of the public.</p>

18. The Council must have regard to the needs of agriculture and forestry, and the desirability of conserving flora, fauna and geological and physiographical features. The bridleway diversion will utilise a banked bridge abutment on land which has already been taken out of arable use for highway use. This will use approximately 7600 m² of previously arable land. The proposed footpath diversion currently crosses arable land for approximately 77 metres and would do so on its new route for approximately 97 metres. The difference (about 20 metres) is relatively small. Consequently, the impact on farming and conservation is relatively minor.
19. The Council must also have regard to any material consideration within the Council's Outdoor access Improvement Plan. This proposal would not have any material effect and would facilitate better equestrian use through the utilisation of a vehicle-free crossing of the A421.

Application to the Magistrates' Court under Section 116 of the 1980 Act

20. The option of applying to the Magistrates' Court for orders under Section 116 of the 1980 Act has been considered and rejected for the following reasons:
 - a. The use of Section 116 is contrary to Council policy (Central Bedfordshire Council Rights of Way Applications Policy) where no vehicular rights of way are being stopped up or diverted.
 - b. The legal test for stopping up public rights of way is stricter: the ways needing to be "*unnecessary for public use*" rather than just "*not needed*".

- c. The process under Section 116 takes longer and requires adherence to a firmer timeline for when information needs to be published than is required under Sections 26, 118 and 119 of the 1980 Act. Conversely, any objections are voiced in court on the day of the application and do not have to go through the lengthy Secretary of State objection process in order to be resolved.

Creation of a cycle track under Section 65 of the 1980 Act

21. Section 65 of the 1980 Act empowers a highway authority to construct a cycle track as part of the highway in or by the side of a highway maintainable at the public expense which consists of or comprises a made-up carriageway. However, this option has been rejected because:
 - a. Cycle tracks are not a type of highway that can be recorded on the Definitive Map and Statement and so no route could be shown on this map or potentially on an Ordnance Survey map which would thus prejudice the public's use of the route through lack of awareness.
 - b. Section 118(5) of the 1980 Act does not recognise the process of creating a cycle track when considering any alternative routes as mitigation in relation to the stopping up of footpaths and bridleways. Consequently, the provision of a cycle track under Section 65 would severely prejudice the available legal mechanisms for stopping up those footpaths crossing the A421.

A Side Roads Order under Section 14 of the 1980 Act

22. The option of making a Side Roads Order under Section 14 of the 1980 Act has been considered and rejected for the following reasons:
 - a. For an order under Section 14 to be made the principle carriageway needs to be classified as a "classified road" or a "trunk road" for the purposes of Section 14. Section 329 ("Further provisions as to interpretation") dictates that S.12 of the 1980 Act defines "principal roads" and "classified" roads. It is unclear from this whether the A421 is a "classified road" for the purposes of the Act.
 - b. For a "classified road", the order can be made by Central Bedfordshire Council, but the Secretary of State is the confirming authority and would need to be satisfied that another "*reasonably convenient route is available or will be provided*" before the affected footpaths and bridleway are stopped up. This is a different legislative test to "*not needed for public use*" and so some of the proposed stopping ups – especially Hulcote & Salford Footpath No. 10, may not succeed.
 - c. As stated, the order made would need to be confirmed by Secretary of State and the length of time this process would take is unknown.

Local Access Forum

23. The Central Bedfordshire and Luton Joint Local Access Forum (“*JLAF*”) is a statutory advisory body on public access issues. An extract from the *JLAF*’s terms of reference are shown below:

3. Status

3.1 The Central Bedfordshire and Luton Joint Local Access Forum (“The Forum”) will be a statutory advisory body having no executive functions, funded by Central Bedfordshire Council and Luton Borough Council and administered by Central Bedfordshire Council. Established under section 94 of the Countryside and Rights of Way Act 2000 and Statutory Instrument 2002 No 1836 The Local Access Forums (England) Regulations 2002.

4. Advice given by the Forum

4.1 The Forum performs a statutory function and all section 94(4) bodies are required, under section 94(5) of the CROW Act, to “have regard, in carrying out their functions, to any relevant advice given to them” by a forum. ‘Having regard’ means that although not bound to follow such advice, section 94(4) bodies are legally required to take it into account in carrying out their functions.

4.9 Protection and Development role

The Forum has an important role to play in protecting existing and helping to plan new public access. The Forum will be made aware of any DMMO application and will be consulted on all schemes that may result in the closure, diversion or creation of:

- a) a public right of way,
- b) a permissive path,