

**HIGHWAYS ACT 1980**  
**Milton Keynes City Council**

**Hanslope Footpath 11 (Part) Public Path**  
**Diversion Order 2023**

**Milton Keynes City Council**  
**Statement of Case**

## **STATEMENT ON THE GROUNDS ON WHICH IT IS CONSIDERED THE ORDER SHOULD BE CONFIRMED**

1. When considering the diversion order the Council believes the following criteria of Section 119 have all been met and as such the order should be confirmed:
  - Whether it is in the interests of the landowner that the right of way in question should be diverted
  - Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway
  - Whether the right of way will not be substantially less convenient to the public
  - The effect that the diversion would have on public enjoyment of the path as a whole
  - The effect on other land served by the existing right of way
  - The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it.

### **Whether it is expedient in the interest of the landowner that the right of way in question should be diverted**

2. The section of Hanslope Footpath 11 proposed to be diverted runs through land owned by the applicants who reside at Cuckoo Hill Cottage, Hanslope. The footpath travels along the driveway leading to the house, and then passes adjacent to the north/west of the property building. At either side of the Public Footpath there are paddocks in which the applicant keeps horses which had been previously rescued by the RSPCA.
3. There have been significant changes in the vicinity of the locale of the applicant's property in terms of new adjacent housing developments which have created new security and privacy concerns for the landowner. Their property, which several years ago sat in fields adjacent to a farm, is now on the edge of a new housing estate.
4. The applicant has faced issues with members of the public attempting to interact with and feed their horses. Given their background as being rescue horses, they are nervous by nature and have health issues. The change in the nature of the area has increased the number of footpath users and exacerbated this issue. A comprehensive description of the issues faced by the applicant is provided in their representation which is included within the submission for this case.

5. The proposed diversion seeks to move the footpath to travel along the perimeter of their property to alleviate the issues outlined above.
6. As such, this diversion order is clearly in the landowner's interest.
7. Issues surrounding privacy, which the applicant also raises as a reason for the diversion, are further explored later within this statement in paragraphs 36-38.

**Whether the point of termination of the path will be substantially as convenient to the public given that it is proposed to be diverted to another point on the same or a connecting highway**

8. Hanslope Footpath 11 is proposed to terminate at point D on the order plan which would be a junction with the existing Hanslope Public Footpath 53. Hanslope Footpath 53 connects to point B on the order plan, the current termination point of Hanslope Footpath 11. Therefore, this test is met.

**Whether the right of way will not be substantially less convenient to the public**

9. The length of the section of Hanslope Public Footpath 11 which is proposed to be diverted (shown between points A-D on the order plan) measures approximately 283 metres.
10. The order route (shown between points A-C-D on the order plan) and the required connecting section of Hanslope FP53 between points B-D is 351 metres. It will have a width of 2 metres.
11. When considering the length and directness of the route the proposal may be less convenient for some users, however, the legislation requires a view on the substantiveness of this inconvenience.
12. The order route, including utilising the required existing section of Hanslope Footpath 53, will add only 68 metres to the user's journey, which is approximately 61 seconds (using the average walking speed of 4 kilometres per hour, suggested on the Ramblers website). The Council does not believe this to be substantial.
13. The primary function of the route is recreational, so this additional length associated with the proposed route is not seen as being significant given the usage and nature of the route.

### **The effect on other land served by the existing right of way**

14. The order does not inhibit or otherwise affect access to any other land. The order route would take pedestrians away from the sole private vehicular access to the property through the land under the ownership of the applicant.
15. The Order has been made at the request of the landowner to minimize privacy concerns and protect the welfare of horses kept on the property. There is no evidence the diversion would have a negative impact on the land served by the existing route.

### **The effect of any new public right of way created by the order would have on land over which the right is so created and any land held with it.**

16. The proposed order route will travel through a field along the edge of a hedgerow providing a clear linear route.
17. Some clearance of vegetation to create a gap in a hedge would be required to create the order route at point D on the order plan. The impact of this is seen as minimal.
18. Due to the proposed route travelling adjacent to a hedgerow, the applicant is aware of and agree to the responsibilities associated with having to manage the route as regards any potential future vegetation encroachment upon the route.

### **Further considerations**

19. In addition to the tests set out in section 118 and 119 of the Highways Act 1980, the County Council must also have regard to the following issues when considering an application to divert and/or extinguish a public right of way.
20. There are no relevant considerations in relation to the Council's Rights of Way Improvement Plan.
21. Section 121 Highways Act 1980 outlines that the provisions of Section 29 Highways Act apply to diversion orders. Therefore, under section 29 of the Highways Act 1980, the Council has a duty to have regard to the needs of agriculture (including the breeding and keeping of horses), forestry and the desirability of conserving flora, fauna, and geological and physiographical features.

22. In this instance, the applicants keep horses which is a key factor in the reasoning behind this order. The Council takes the view it is fulfilling its duty under this act by giving due regard to the needs of the applicant by proceeding to make a Public Path Order to accommodate their needs in this respect.
23. Section 40 of the Natural Environment and Rural Communities Act 2006 requires that every public authority must have regard “so far as is consistent with the proper exercise of (its) functions, to the purpose of conserving biodiversity”. As mentioned in paragraph 17, a small section of vegetation at point D on the order plan will need to be removed to create an appropriate 2-metre-wide gap in the existing conifer hedge. This work is seen to have a minimal impact as regards biodiversity conservation. However the applicant would be recommended to check for nesting bird and animal habitats should the order be confirmed, and the route required to be created.

## **STATEMENT CONTAINING THE OMA’S COMMENTS ON THE OBJECTION**

### **HIGHWAYS ACT 1980**

The sole Objector who has requested to remain anonymous raised the following points in their objection to the order: -

- The proposed diversion is not as substantially convenient to the public as the original route.
- The proposed diversion has a negative impact on public enjoyment of the path as a whole.
- The proposed diversion is not in the interests of the public.

*The proposed diversion is not as substantially convenient to the public as the original route.*

24. The Council has laid out its reasons why it believes the orders have met the legal tests and as such should be confirmed. The Council has covered its view on the convenience of the order route, including details on the length as outlined with paragraphs 9-13.

25. The applicant has confirmed gates will be used at points where the new route will travel across boundaries. The surface between points A-C-D on the order plan will be grass. It is accepted this is perhaps not as convenient for some users to the hard surface of the current route. However, this should be set against the context

of the location. As this location is on the very fringe of the urban area of Hanslope, users do have to walk on grass/ natural surfaces along continuations of existing public rights of way that travel on from this route within the general vicinity.

26. The objector refers to an issue relating to a section of footpath which does not form part of the order route that is obstructed. This obstruction is along the section immediately East of point B. The Council has spoken to the applicant in relation to this matter and it is recognised by all parties that the Public Footpath as shown on the Definitive Map along this section has become obstructed. The applicant has provided assurances this work will be undertaken, and it is deemed that appropriate highway legislation can resolve this issue in the unlikely event it is not.

*The proposed diversion has a negative impact on public enjoyment of the path as a whole.*

27. The second reason for objection provided relates to the objector's view that the view of the Tove Valley will be lost by Cuckoo Hill Cottage. It is suggested that this will therefore have a negative impact on public enjoyment of the path as a whole. The view of the Tove Valley cannot be seen along approximately half of the route proposed to be diverted (the northern section) as it is hidden by a paddock hedge to the west. The view becomes available nearer the applicant's property along the southern half of the route. As the route is suggested to be diverted away from the immediate vicinity of this property, there is no dispute this view from this section will be lost along this stretch.
28. The Council would point out that the view would still be possible to be seen along the unaffected section of Hanslope Footpath 11, which travels to the southwest of point B on the order plan. This view opens out to a more significant and spectacular view of the Tove valley. The view of the valley will still be possible to be enjoyed along immediately adjacent Public Rights of Way to the Order route.
29. The loss of this view along the stretch of footpath outlined within the order should be weighed up against the advantages in terms of public enjoyment with the order route being further away from the applicant's home. The Council takes the view that many users are likely to find the new route, being further away from the applicant's property, is likely to increase their enjoyment of the route. This aspect is further explored within the section of this document which addresses recent government guidance related to this matter. The Council takes

the view that on balance the proposal does not have a negative impact overall on the public enjoyment of the path.

*The proposed diversion is not in the interests of the public.*

30. The objector states that the proposal is not in the interests of the public. For clarity, the order is being made in the interests of the landowner. The Council has outlined in paragraphs 2-5 the landowner's reasons for diversion, which the Council accept as genuine and reasonable. The Council considers the relevant legal test has been met.
31. The legislation does not state that the proposal needs to benefit the public, the legislation is clear that an order can be made in the interest of the landowner (as this order has been) and a judgement has to be made on how substantial the impact of the diversion is on the convenience of users, and a view taken on its impact on the public's enjoyment. The diversion does not have to be an improvement to the public, it just must not be substantially worse.
32. The Council has given their thoughts regarding the landowner's reasons for diversion. The Council considers the relevant legal test has been met.
33. The Council believes that when taking all relevant factors into consideration the proposal is reasonable and the impact on the public is not significant enough to prevent the order being confirmed.

**GOVERNMENT GUIDANCE ON DIVERSION OR EXTINGUISHMENT OF PUBLIC RIGHTS OF WAY THAT PASS THROUGH PRIVATE DWELLINGS, THEIR CURTILAGES AND GARDENS, FARMYARDS AND INDUSTRIAL OR COMMERCIAL PREMISES**

34. In August 2023 the Department for Environment Food and Rural Affairs published guidance regarding diversions of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises.
35. This guidance is highly relevant to this case, as the order route travels adjacent to the applicant's private dwelling and paddocks immediately surrounding their

property. The Council takes the view that given the setting, the entire order route falls within the definition of this guidance.

36. Paragraph 4 of this guidance explains that “Members of the public may not be comfortable following a path through a contained space of this type because doing so feels like infringing on the privacy of a house owner [...] Such path alignments can deter people from exercising the public’s right to use the path”.
37. Paragraph 5 continues to state that “Few people are troubled by using public paths across privately owned land around a house or farm, so long as they feel they can keep a reasonable distance from it. But the more that a route over privately owned land brings people into close proximity with the associated house or operational farm buildings, the less likely they are to feel comfortable using it”.
38. Paragraph 6 outlines the reasons why the presence of the current public right of way could be problematic for the landowner, several of which can be applied to this case.
39. This guidance recognises the issues for both the landowners and the public around a public footpath running through residential properties and supports the owner of Cuckoo Hill Cottage in their reasons for diversion. It also adds support to the Council’s view of the impact on enjoyment of the route as a whole as detailed in paragraph 29 above.
40. Paragraph 9 of the guidance states that “In all cases where the guidance applies, the order-making and confirming authority should weigh the interests of the owner and/or occupier against the overall impact of the proposal on the public as a whole. They should note that reducing or eliminating the impact of the current route of the right of way on the owner and/or occupier, in terms of privacy, security and safety, are important considerations to which due weight should be given”.
41. As such the Council believes that this guidance and the factors described within it, should be considered (alongside the legislation) by the Planning Inspectorate when considering the confirmation of this order.