

## **PLANNING & REGULATION COMMITTEE – 15 FEBRUARY 2010**

### **PUBLIC RIGHTS OF WAY DIVERSIONS – OBJECTED TO ORDER**

#### **Report by Head of Sustainable Development**

#### **Introduction**

1. Under the Council's Constitution, Section L – Schedule (3)A(b)i, any published public footpath, bridleway or restricted byway diversion order that results in an objection being received must be referred to the Planning & Regulation Committee.
2. This report sets out the details and circumstances of a diversion order that has received objection following publication. The relevant legislative framework and powers are briefly explained to enable the Committee to decide whether the objected to orders should now be submitted to the Secretary of State for determination. Copies of the diversion order and the letters of objection received have been placed in the Members' Resource Centre.

#### **Background – Objected to Orders**

3. Having received objection to an order the Committee cannot confirm it, but is limited to one of two options:
  - (a) To pursue the order despite the objections, in which case the order and objections are submitted to the Planning Inspectorate for the Secretary of State to make a determination. This would usually result in a local public inquiry, but the case may be dealt with at a hearing or by written representations.
  - (b) To withdraw the order in the light of the objections received. The making of diversion orders is a discretionary function under the Highways Act 1980 and there is no right of appeal for the applicant.
4. In coming to a decision the Committee should also be aware of the additional Highways Act 1980 provisions required for the confirmation of an order, which are that the Secretary of State must be satisfied that:
  - (a) The diversion is expedient in the interests of the person(s) stated in the order;
  - (b) The path will not be substantially less convenient to the public as a consequence of the diversion;
  - (c) It is expedient to confirm the order having regard to the effect it would have on public enjoyment of the path as a whole, on other land served by the existing path and on land affected by the proposed new path, taking into account the provisions for compensation.

## **Bodicote Footpath 8 (Part) and Bloxham Footpath 2 (Part) Public Footpath Diversion Order 2008**

5. This order was made on 4<sup>th</sup> December 2008 under section 119 Highways Act 1980. The application had been considered under delegated powers and in line with the 'Statement of Criteria and Priorities' for such diversion applications approved by the Committee at its meeting on 20 May 2002 and updated by the Committee on 27<sup>th</sup> November 2006.
6. Before making a diversion order under s.119 the authority must be satisfied that it is beneficial to divert the path in the interests either of the public or of the owner, lessee or occupier of the land crossed by the path, or both. In the case of the diversion order for Bodicote 8 and Bloxham 2 it was made in the interests of the landowner.
7. The effect of the order, if confirmed, would be to divert part of Bodicote Footpath 8 and Bloxham Footpath 2 that runs along the front of the converted Bodicote Mill onto a new route running to the east of the mill but still within the curtilage of the property. Further details are set out in Annex 1 together with a summary of the consultation responses received and a copy of the order map.
8. Although there has been substantial local objection to the order on balance it is felt that the order would meet the provisions for confirmation set out in paragraph 4 and it is recommended that the order is submitted to the Secretary of State for determination.

### **Financial and Staff Implications**

9. The resources required to submit the order to the Secretary of State and to arrange and present the County Council's case at any consequent public inquiry can be met from the existing budget and staffing for this work.
10. Recovery of costs for publication of such orders is constrained by legislation, but applicants will be re-charged in line with approved charges.

### **RECOMMENDATION**

11. **The Committee is RECOMMENDED to submit the objected to order for Bodicote Footpath 8 and Bloxham 2 to the Secretary of State for Environment, Food and Rural Affairs for determination.**

CHRIS COUSINS  
Head of Sustainable Development  
Environment & Economy

Background papers: In File 137/FP8/DIV/06.07 located in Rights of Way Office, Environment & Economy, Central Library, Westgate.

Contact Officers: Keith Wheal, Countryside Service Manager  
Tel: 01865 810202  
Andy Sylvester, Rights of Way Officer. Tel: 01865 815302

February 2010

**BODICOTE FOOTPATH 8 (PART) AND BLOXHAM FOOTPATH 2  
(PART) PUBLIC PATH DIVERSION ORDER 2008**

Applicant: Mr and Mrs MJB Weston, Bodicote Mill, Church St, Bodicote  
OX15 4DR

Date of Application: 5<sup>th</sup> June 2002

Reason for application:

- To address the privacy and security concerns of Mr and Mrs Weston, the owners of Bodicote Mill.

Additional Information:

Historically, the mill at Bodicote ceased to operate in 1938. It was then purchased by Thames Water who converted the mill into a series of flats for employees. Following a fire the mill fell into disrepair before being purchased in 1988 for renovation as a private residence. In 1992 the then owners, Mr and Mrs Purton, submitted the footpath diversion application before the current owners bought the property in 1998.

The Planning and Regulation Committee resolved at its meeting on 27<sup>th</sup> November 2006 not to pass two concurrent Orders made in respect of this diversion application to the Secretary of State for determination. This was to avoid the potential retention of a cul-de-sac route when walking from Bodicote village, should the Secretary of State have confirmed only one of the Orders. The Order now before the committee addresses that possibility.

**CONSULTATIONS:**

Prior to any Order being made, 'pre-Order consultations' are carried out with amenity groups, local councils, etc. and if an Order is then made, formal consultations are sent out.

**Pre-Order Consultations:** 10<sup>th</sup> July 2007

Bodicote Parish Council:

- No objection providing a right of way is maintained onto the bridge [part of Bloxham Footpath 2] crossing the river. [to which the applicants agreed].

National Farmers Union:

- No objection.

***1 representation of support:***

County Councillor Keith Mitchell, Bloxham Division:

- Strongly supports the diversion. The diversion maintains an adequate right of way for the public whilst providing improved security and privacy to the applicants.

**4 Objections:**

Andrew Willis, 42 The Rydes, Bodicote:

- Applicants should not have bought the property as they were aware of the privacy and security aspects.
- The path through the mill is the best part of the footpath.
- Diverting the path will remove the ability to see Sor Brook, wildlife at close quarters and the historic mill.

Mr Dave Meadows, 15 Blackwood Place, Bodicote:

- The most pleasing part of the route is the view and proximity to the river.

The Ramblers' Association:

- The enjoyment of the path would be reduced in that the views of the mill stream and the house would be reduced.

The Oxford Fieldpaths Society:

- The view of the mill stream is lost and the view of the house is diminished.

**Order Made:** 4<sup>th</sup> December 2008      **Order published:** 11th December 2008

The following formal objections were made following the publication of the Order:

Martin and Veronica Warner:

- The diversion would remove the direct passage over the fields to Bloxham and Milton.
- Sets a precedent for the two footpaths across the Sor Brook either side of Bodicote Mill which also run past converted mills.

Mr EM McAlpine:

- The landscape and historical setting of the Mill can only be more fully appreciated from the existing path.
- Privacy concern might be valid.
- Concern about security does not appear to be substantiated.
- The diversion based largely on privacy and security creates a precedent.

MH Peel:

- No advantage to the public.
- Footpath was in existence long before the owners took up residence.
- It is part of Bodicote circular walk No.1.
- The pleasant views from the footbridge will be lost.

Catherine Berry:

- The footpath is an ancient right of way and the most direct route from Bloxham to Bodicote.
- Does not believe any exceptional circumstances exist to warrant a diversion.
- The applicants bought the property knowing the footpath may entail loss of privacy and/or security.
- Alarm systems and CCTV could provide adequate protection.
- The applicants clearly stand to benefit in terms of enhanced privacy but at the cost of a significant and permanent loss of amenity to the public.
- There is particular pleasure in walking close by old and historic buildings.
- Most walkers appreciate the sense of history that mills have and their relationship to the landscape and historical setting.
- The diversion would set a precedent.

Mr E. Tait:

- The owners bought the property in the knowledge that the path ran in front of the house.
- People who use footpaths are generally considerate and sensitive and therefore would not engage in felony.
- The proposed route would receive little use due to its proximity to the road.
- A diversion of this footpath would set a precedent for the Mills either side of Bodicote Mill which also have rights of way running through them.

Mr Keith Palmer:

- A diversion of a footpath to and from the mill would erase the history of this path.
- The owners bought the property in the knowledge that the footpath passed in front of it.
- Restricted Byway 12 [part of the diversion route] is less safe than the existing route.

Miss Isabel Hands:

- To divert the path away from the mill would divorce it from its original purpose and the historical significance would be lost.
- Whilst understanding the need for privacy, the owners bought the property in the knowledge that the footpath runs directly in front of the building.
- Walking the footpath provides proximity to the historic mill.
- Removal of the path would not deter thieves.
- The footpath provides part of a completely 'off-road' route to Bloxham.

Rita Palmer:

- People have enjoyed walking alongside the mill with its working heritage.
- The new path would rarely be used due to a tree plantation obscuring the view.
- Two mills close by [Upper Grove and Lower Grove Mills with routes of way through their grounds] have not registered concern about their privacy.
- The owners knew of the paths existence.

Mr MH and Mrs ES Shotton:

- A diversion would set a precedent.
- The path is the most direct route between Bodicote and Bloxham.
- The historic building and its detail rewards close observation and cannot be appreciated from a distance.
- The owners bought the property in the full knowledge of the footpaths existence.
- Do not believe there are grounds for privacy.
- Owners must have been aware of the security concerns at the time of purchase.
- There are other security systems available such as CCTV cameras and walkers are not opportunistic thieves.
- The proposed route will be virtually unused.

The Oxford Fieldpaths Society:

- The diversion would affect public enjoyment of the footpath as a whole because those who use it as a through route between Bloxham and Bodicote will lose the view of the river and mill stream.
- The proposed route could give rise to similar drainage problems as that along the existing route.

The Ramblers' Association:

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Mrs Julie Hart:

- The existing path is an historic one and particularly pretty.
- The owners bought the property knowing of its existence.

Mr Martin Saunders:

- The footpath is part of Bodicotes local history.
- Passing closely to the ancient mill is a great part of the pleasure in using the path and its loss would be a great loss of amenity to the public.
- The existing footpath provides a route to Bloxham wholly over fields.
- The proposed route is pointless as it takes walkers back onto the road and there would be no reason to enter the field only to be led back onto the road again.
- The owner bought the property in the knowledge of the paths route.
- This diversion would set a precedent that could result in the loss of similar footpaths at other local mills and any places where a desire for privacy is requested.

Mr RW Watson objected but subsequently agreed to withdraw his objection.

**Case Officers Remarks:**

It is considered that the diversion Order meets the salient tests laid out in s119 of the Highways Act, both for making an Order and confirming an Order. The diversion would address the privacy issues of the owners whilst providing an alternative route that is not substantially less convenient to the public. It is acknowledged that there is strong local objection to this diversion due to the loss of the path's route running directly past the mill and that some loss of enjoyment for the public would result. However, the diversion of the path would vastly improve the applicant's privacy since the current route runs directly alongside the front of the house and near to the converted coach house, now lived in by Mrs Weston's elderly mother.

Although this is a finely balanced case it is considered that such is the route of the path and circumstances of the occupancy, the grounds of "privacy" counteract the objections.

**Recommendation:**

To pursue the Diversion Order by referring the Order to The Secretary of State for Environment, Food and Rural Affairs.

**ABS**

January 2010

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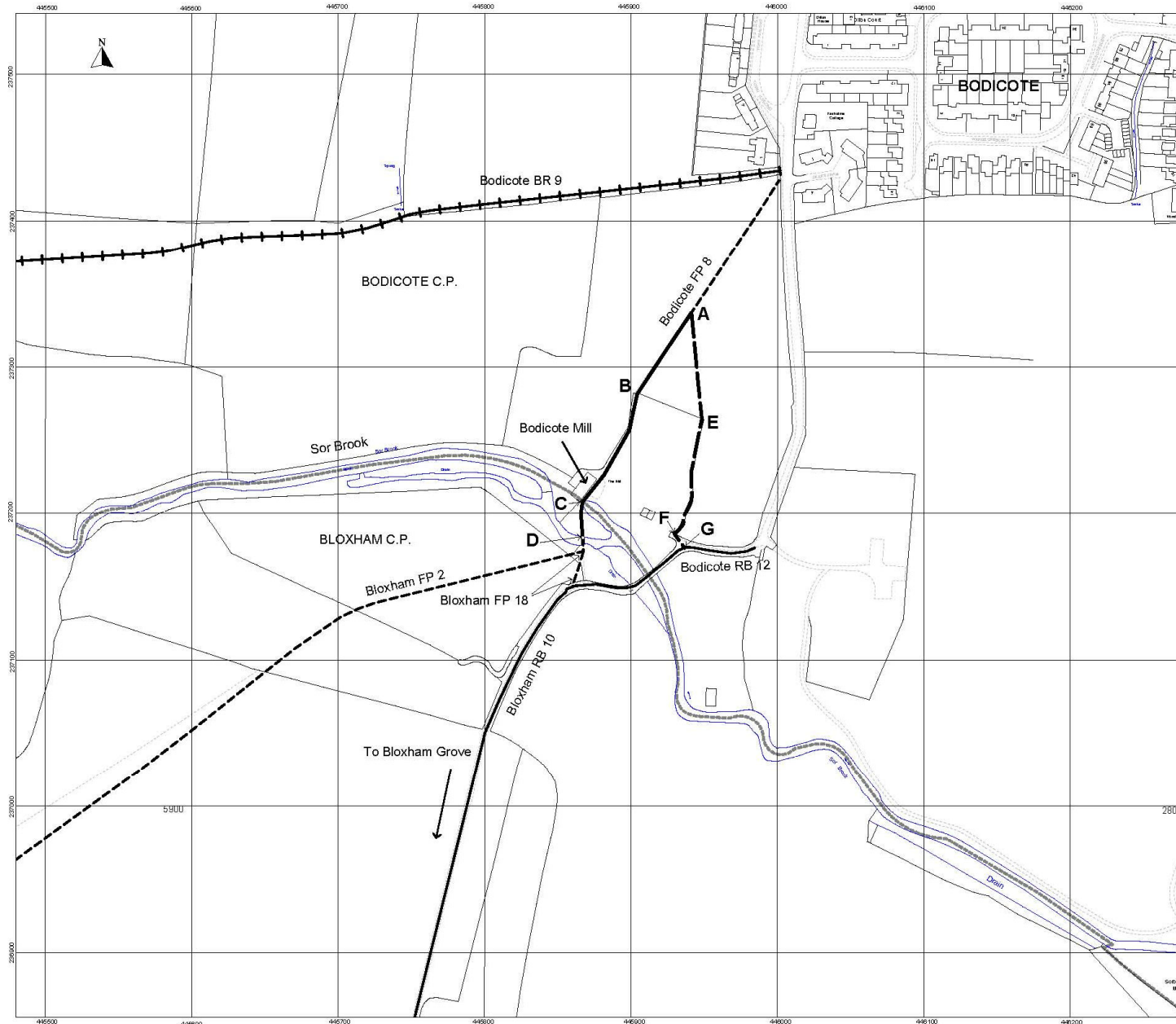
**Recommendation:**

To pursue the Diversion Order by referring the Order to The Secretary of State for Environment, Food and Rural Affairs.

**ABS**


**January 2010**


# PN12





**Highways Act 1980  
Sec 119**


**Order to Divert  
Bodicote FP No. 8 (part)  
and  
Bloxham FP No.2 (part)**


**Existing Footpath No. 8  
to be deleted**  
A - B - C   
Length: 150m

**Existing Footpath No. 2  
to be deleted**  
C - D   
Length: 25m approx

**Proposed new route  
of Footpath**  
A - E - F - G   
Length: 167m  
Width: 1.5m

**Unaffected rights of way**  


**Parish boundary**  




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