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| **Order Decision** |
| Site visit made on 3 August 2021 |
| **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 SEPTEMBER 2021** |

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| **Order Ref: ROW/3265446** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 (the Act) and is known as the Kent County Council (Public Footpath MR286 (Part) Offham & Mereworth) Public Path Diversion and Definitive Map & Statement Modification Order 2020.
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| * The Order is dated 30 July 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
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| * There was one objection outstanding when Kent County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. The effect of the Order would be to divert part of Public Footpath MR286 from its current legal alignment to a new route to the west from point A on the Order map to link with Public Bridleway MR260 at point E. Point E is approximately 1,220 metres (m) generally north-west of the current junction of the rights of way at point B.
2. At the time of my site visit I was able to walk the section of Public Footpath MR286 to be diverted between points A and B and the proposed diverted route between points A, X, Y, C, D and E on the Order map, which had been surfaced. No-one requested an Accompanied Site Visit and I consequently walked the routes in both directions unaccompanied.

The Main Issues

1. The Order was made because it appeared to the Council that it was necessary to divert the Footpath in question to allow development to be carried out in accordance with planning permission granted under Part III of the Act.
2. Section 257 of the Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the Footpath to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
3. Even if I were to find it necessary to divert the path to allow implementation of the permission, my confirmation of the Order is discretionary. In exercising this discretion, I must consider the merits or disadvantages of the proposed diversion in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be extinguished by it.

Reasons

*Whether it is necessary to stop up the footpath to enable development to be carried out*

1. Planning permission has been granted for the extraction of Kentish ragstone, an economically important mineral, at Blaise Farm Quarry. The approved area of working extends to either side of and over the route of Footpath MR286. No provision is made on the approved plan for the retention of the footpath on its existing alignment during extraction. The planning permission therefore allows for the quarrying of the mineral along the route of the footpath.
2. The objector to the Order suggests that a tunnel could be provided under the existing route of Footpath MR286 to allow vehicles to pass between the existing and future areas of working as at Hermitage Quarry. However, the retention of the Footpath on its existing alignment would sterilise a significant quantity of workable mineral, of which there are limited deposits close enough to the surface to make them viable for working. This would also be the case without a tunnel, with the additional disbenefit of vehicles having to cross the Footpath.
3. Furthermore, a tunnel does not form part of the approved development and this is not an opportunity to revisit the planning application. Therefore, even if I were to consider the retention of the current route with a tunnel preferable to the proposed diversion, it is not within my power to modify the Order to provide for a tunnel as to do so would result in the planning permission being unable to be implemented in accordance with the approved plans.
4. I am therefore satisfied that the approved development includes part of the existing line of Footpath MR286 and that there is consequently a need to divert part of the Footpath as shown on the Order map to enable the approved development to take place.

*Whether the development is substantially complete*

1. Working has been undertaken to the east of the Footpath, but I saw on my site inspection that no extraction has taken place along the route of the path or to the west. Therefore, in terms of those works affecting the legal alignment of the Footpath, I am satisfied that the development is not substantially complete.

*The effect of the Order on those whose rights would be extinguished by it*

1. The section of footpath to be diverted runs generally southerly for 910 - 915 m from point A on the Order map to point B, along the edge of arable fields. The path is 2 m wide and runs along a concrete vehicular track for a short distance from point A, then along an unsurfaced track with the final section to point B being grassed, providing a reasonably good walking surface for the entire length.
2. The Footpath is open to the west but to the east is a fence with a bund beyond behind which is the currently operational part of the quarry. Noise from the quarry was audible at the time of my site inspection but was not continuous and did not detract significantly from the enjoyment of the Footpath. When walking southwards along the Footpath long distance views are curtailed by woodland to the south but when walking in the opposite direction there are attractive long distance views to the Kent Downs. The existing route therefore provides a pleasant open walking experience.
3. The proposed diversion would run through an existing belt of woodland along the north side of the permitted extraction area west south westerly for 144 m to point X, then west north westerly for 453 m to point C. From there it would run between woodland and the extraction area west south westerly for 314 m to point D and then southerly for 110 m to its connection with Public Bridleway MR260 at point E.
4. The proposed diverted route would therefore be slightly longer than the length of Footpath MR286 to be diverted, although this increase is not significant in terms of the overall length of the path. Point A to point E via the existing Footpath MR286 and Bridleway MR260 is approximately 2,130 m. The proposed diversion would therefore be significantly shorter for users wishing to walk from the north of point A to the north west of point E or vice-versa. However, conversely, for users wishing to walk from north of point A to the south or south-east of point B, the proposed diversion would be significantly longer.
5. The objector contends that Footpath MR286 is used by residents of the former Airforce Estate, to which Bridleway MR260 continues beyond point B, to access Offham, to which Footpath MR286 leads beyond point A, for work, shopping and formal recreation. The additional distance would, the objector suggests, lead to an increase in the use of cars. However, these contentions are not supported by any evidence. The applicant undertook a survey of the frequency and purpose of the public use of Footpath MR286 which indicates that most users of the path use it for leisure purposes. For these users, the shortest distance is likely to be less important than the experience the route offers.
6. Furthermore, the area approved for extraction is very large. The proposed diversion would provide the shortest route around the permitted area. In addition, to mitigate the increase in length, the applicant has offered a permissive path across the middle of the proposed extraction site, 3 m wide and stock fenced to either side, for a period of 15 years or when mineral extraction is required, whichever is the sooner. I saw during my site inspection that this path has already been provided.
7. Views from the proposed diverted route would be significantly more restricted, with views to the Downs to the north from the section through the woodland belt prevented by the trees and only limited views of the ridge of the Downs to the north east above the treeline from between points D and C. The objector has expressed concern that the proposed diverted route would be directly adjacent to a shooting range on land to the north.
8. However, the proposed diverted route provides a pleasant traffic-free walking experience through and adjacent to woodland. The majority of the route is 2 m wide with a small section points X – Y being 3 m wide. The entire route has been constructed with a type 1 sub-base granular stone topped with crushed rock fines. It therefore provides a robust and satisfactory walking surface. With the exception of a shallow dip at one point the proposed route is reasonably level and is free of obstructions. The proposed route would be separated from the shooting range by a thick belt of trees.
9. Bridleway MR260 itself provides a generally pleasant walking experience with a suitable surface and occasional long distance views to the north. The increase in distance aside, the use of this route for anyone walking between Offham and the former Airforce Estate would not result in a markedly worse experience.
10. It is also pertinent that although the Order is for a permanent diversion, following exhaustion of the mineral, the applicant is obliged through a Section 106 Agreement to provide a route on the approximate alignment of the existing path between points A and B as part of the final restoration plan. Extraction is permitted until 2063 but it may be possible to reinstate the path earlier. In time, therefore, the public would have the benefit of two routes, providing an attractive circular walk.
11. I therefore find that the diversion of Footpath MR286 would result in a significant increase in the length of the route for users wishing to travel between the north and the east. The diversion would also result in some loss of openness and views. However, the diverted route would itself offer a pleasant walking experience and be of an appropriate width and surface for its entire length. In due course, a route between points A and B would again be provided. Accordingly, there would not be any significant disadvantage or loss to the general public in terms of overall experience as a result of the diversion.

**Other Matters**

1. The objector to the Order contends that the proposed diversion has been and will be detrimental to wildlife. However, the effect on wildlife from the approved development would have been a matter for consideration by the minerals planning authority at the application stage. In response to the concerns the applicant commissioned an ecological appraisal which concludes that with the measures recommended in the appraisal, which the applicant has agreed to implement, the proposed diversion would avoid significant adverse effects on the ecological interest of the site and area.

Conclusion

1. Having regard to the above and all other matters raised in the written representation, I conclude that the Order should be confirmed without modification.

**Formal Decision**

1. The Order is confirmed.

Martin Small

INSPECTOR

