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| **Order Decision** |
| Site visit made on 12 October 2021 |
| **by J Hunter BA (Hons) Msc MRTPI** |
| **an Inspector appointed by the Secretary of State**  |
| **Decision date: 23 November 2021** |

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| **Order Ref: ROW/3258063** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Copeland Borough Council (Footpath No 406001 and 406006 Parish of Egremont) Public Path Stopping Up and Diversion Order (No1) 2020.
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| * The Order is dated 9th June 2020 and proposes to divert and stop up the public rights of way shown on the Order plan and described in the Order Schedule.
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| * There was one objection outstanding when Copeland Borough 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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Preliminary Matters

1. One of the objections made by the sole objector is that the process by which the Order Making Authority (OMA) made the Order was flawed because the plans showing the proposed diversion/stopping up were not consulted upon during the planning application process. The decision-making process leading to the issue of planning permission is not a matter before me and I have therefore not considered the point further.
2. For the avoidance of doubt, in this case the OMA is Copeland Borough Council with Cumbria County Council acting as agent.

The Main Issues

1. Since the Order was made under section 257 of the Town and Country Planning Act 1990 (the 1990 Act), if I am to confirm it I must be satisfied that it is necessary to permanently divert a section of Footpath no 406001
(labelled A-C on the Order map) onto the alternative line (labelled D-C) and to permanently stop up a section of public Footpath no 406006 (shown as A-B on the Order map) to allow development to be carried out in accordance with a valid planning permission.

Reasons

1. Planning permission (4/19/2044/0F1) was granted on 4 October 2019 by Copeland Borough Council for the creation of three flood storage areas, landscaping and associated works: Land at How Bank Farm, Whangs Beck, Falcon Club, West Lakes Academy and West of Croadalla Avenue, Egremont.
2. Plans with references IMNW000818-VBA-XX-4T3-DR-PL-0001 (rev C01) and IMNW000818-VBA-XX-4ZZ-DR-C-0001 (rev P01.4) show the layout of the proposed flood storage area at Whangs Beck. Whilst the plans do not show the line of the public rights of way 406001 and 406006 it is possible to appreciate how these footpaths would be affected by comparing the Order map with the plans. In essence, the diversion of a section of Footpath no 406001 and the stopping up of a section of Footpath no. 406006 is required in order that the proposed flood storage area can be constructed in accordance with the approved plans.
3. In essence, Footpath no. 406006 would be stopped up at point B on the public highway known as Baybarrow Road. I saw during my site visit that users were already travelling by foot along the existing tarmac footpath which runs west and then north from Baybarrow Road and is roughly parallel with the existing Footpath nos. 406006 and 406001. Whilst I appreciate that my site visit represents only a snapshot in time, the densely overgrown undergrowth at point C on footpath no 406001 indicates that users are already preferring to use the street lit proposed route which according to the evidence before me forms part of the adopted highway, albeit not the definitive map.
4. I have considered the objector’s reference to the Highways Act with regard to the avoidance of creating dead end routes. However, the Order is made under the Town and Country Planning Act 1990 and in any event, I am content that the proposed route would not result in a dead-end route as it would connect with an adopted highway as described above.
5. The objector does make a valid point in relation to whether the Footpath 406006 could be permanently diverted rather than stopped up, the obvious alternative being via the Baybarrow Road footway. However, the law has found that the principle of diverting a public right of way onto another existing public right of way is not appropriate. This issue was explored in the case of *R v Lake District Special Planning Board ex parte Bernstein [1982] (‘Bernstein’)* where in his judgement Hodgson J considered it to be wholly inappropriate to divert a path onto an already existing right of way.
6. In determining an order of this kind, it should not be assumed that because planning permission has been granted the affected public right of way will automatically be diverted or stopped up. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order[[1]](#footnote-1). However, no such issues have been raised in this case.
7. On the basis of the information provided, I am satisfied that the relevant statutory tests are met, and I conclude that it would be expedient to confirm the Order with the modifications requested.

Conclusions

1. Having regard to the above and all other matters raised in the written representations, I conclude the Order should be confirmed.

**Formal Decision**

1. I confirm the Order.

J Hunter

**Inspector**



1. Rights of Way Circular 1/09 (Defra) [↑](#footnote-ref-1)