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| **Order Decision** |
| Site visit made on 22 March 2022 |
| **by Andrew McGlone BSc MCD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 11 April 2022** |

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| **Order Ref: ROW/3277527** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Wirral Borough Council Church Street Footpath Stopping Up Order 2021.
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| * The Order is dated 17 February 2021 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were two objections outstanding when Wirral Borough Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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| **Summary of Decision: Order is not confirmed.**  |
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The Main Issues

1. Section 257(1) of the Act provides for an Order to be made authorising the stopping up (or diversion) of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act. In this case the Order is for the stopping up of a footpath between Church Street and Liscard Road.
2. The DEFRA Circular 1/09 version 2 makes clear that, in determining an order of this kind, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure of a footpath that confirmation of the ensuing order will automatically follow. Any disadvantages or loss likely to arise as a result of the path closure to members of the public may be weighed against the advantages arising from the development when determining the Order.
3. There are two issues that must be considered here. These legal tests have been described by the Courts as ‘the necessity test’ and ‘the merits test’. Confirmation of the Order requires that both are satisfied.

**Reasons**

*Background*

1. Planning permission was granted on 4 December 2018 for the erection of a 2/3 storey residential building containing 10 No. apartments for affordable rent together with parking and landscaping (Council Ref: APP/18/01077).
2. Since then, the Council discharged condition Nos. 3, 4, 6, 7 and 8 (Council Ref: DIS/20/00142). These conditions relate to materials, sustainable drainage to manage surface waters, hard and soft landscaping, boundary treatment and a scheme of various highway works.

**The ‘need’ case**

*Whether the stopping up of the footpath is necessary to allow development to be carried out in accordance with planning permission already granted*

1. When the Order was submitted, the Council was satisfied that it was necessary to close the section of footpath in question (shown as A-B on the Order map) to enable development to be carried out in accordance with planning permission granted under the Act. However, due to the passage of time since the planning permission was granted, I need to be satisfied that this remains valid.
2. The planning permission granted was subject to a planning condition stipulating when development needed to have begun by. This was 4 December 2021. Wirral Borough Council, who made the Order, confirmed that several planning conditions have been discharged since the Order was made. However, this does not necessarily mean that development has begun on site. Evidently, when on site, I could see that there was no evidence of any development having begun in relation to the planning permission granted. The Council have confirmed this position. Therefore, whilst the closure of the footpath subject of the Order may be critical to the development proceeding, the relevant planning permission is no longer extant. Hence, it is not necessary for the footpath subject of the Order to be stopped up to allow development to be carried out.

**The ’merits’ case**

1. Owing to my finding on the need case I have not gone onto consider whether there are any advantage or disadvantages to the public and whether one outweighs the other.

**Conclusion**

1. Having regard to these, and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

1. The Order is not confirmed.

Andrew McGlone

INSPECTOR

**Copy of Order Map (not to scale)**

