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| **Order Decision** |
| Site visit made on 24 May 2022 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs** |
| **Decision date: 21 July 2022** |

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| **Order Ref: ROW/3275933** |
| * This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the Cumbria County Council (Footpath No. 302151 Parish of Alston Moor) Public Path Extinguishment and Definitive Map and Statement Modification Order 2021. |
| * The Order is dated 16 February 2021 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were two objections outstanding when Cumbria County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is not confirmed.** |
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Procedural Matters

1. The objectors to the Order argue, among other matters, that the wrong procedure has been used and that a more appropriate mechanism for stopping up the Footpath would be through Sections 251 or 257 of the Town and Country Planning Act 1990 (as amended).
2. Whilst this may or may not be the case, it nevertheless remains that what is before me is an Order made under Section 118 of the Highways Act 1980, and it is this that I am required to consider.
3. The Order Making Authority (OMA) supports the making of the Order.

The Main Issues

1. The order is made on the ground that the path is not needed for public use. By virtue of Section 118(2) of the 1980 Act, before confirming the Order, I must be satisfied that it is expedient to extinguish the path having regard to:

(a) the extent (if any) to which it appears that the path would, apart from the Order, be likely to be used by the public, and

(b) the effect that the extinguishment of the path would have as respects land served by the path, having regard to the provisions for compensation.

1. I also need to have regard to any material provision contained in a rights of way improvement plan (ROWIP) for the area.

Reasons

1. The Order relates to a Footpath with a length of approximately 126 metres that runs up a hillside in an east-north-easterly direction from an unnamed road at a point just to the north east of its junction with the A689, adjacent to a building known as Haggs Bank Bunkhouse, to join Footpath No. 302089 which runs across the line of the slope roughly parallel to the A689.
2. At the time of my site visit, in its lower section closest to the A689, the definitive line of the Footpath was not visible on the ground and the route was obstructed by a stone block retaining wall and a timber post and rail fence on the lower part of the slope. On the upper part of the definitive route, there was some indication, in the form of a slightly worn track through the grass, that people were joining or leaving Footpath No. 302089 from approximately the definitive line of the Footpath.
3. From my observations, it was apparent that works had been undertaken at some point in the past to modify the landform of the hillside to create level terraced areas, the construction of stone block retaining structures, and the creation of a roadstone surfaced track that dog legs up the hill side. These can be seen on the aerial image included in the OMA’s submissions. The evidence sets out that this area is used for at least some of the year as a campsite, and this was borne out by signage at the site. At the time of my visit, it was not being used. Nonetheless, Section 118(6) of the Act sets out that, for the purposes of that Section, any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
4. The report to the OMA’s Development Control and Regulation Committee sets out that the landowner sought the extinguishment of the Footpath for reasons of security and safety.

*The extent that the path would, apart from the order, be likely to be used by the public*

1. The maps in the OMA’s submissions indicate that there is an extensive network of public rights of way in the vicinity. However, no evidence has been put to me in respect of the level of usage of the Footpath that forms the subject of this Order or other parts of the public rights of way network in the surrounding area. I observed when I visited the site that Footpath No. 302089 appears to be well used and the line of this path was clearly discernible on the ground.
2. The Footpath is clearly signposted at the point where it joins the unnamed road just to the north east of the A689. As there is the presence of a slightly worn track on the upper part of the definitive route, I consider it likely that, because the lower part of the definitive route is currently obstructed, walkers are using the roadstone track that has been constructed to facilitate access to Footpath No. 302089.
3. I also saw when I visited the site that the parcel of land through which the Footpath runs is not especially wide and there are other Public Footpaths to each side of it that link the A689 to Footpath No. 302089.
4. On the north western side, Footpath No. 302110 follows the line of an unnamed road, which has a metalled surface, up to the point where it meets Footpath No. 302089. Beyond this point Footpath No. 302110 continues in a generally north easterly direction to meet a minor highway that runs parallel to the A689 at this point.
5. To the south east side, Footpath No. 302127 is accessed via a stile over a drystone wall adjacent to a pull off from the carriageway of the A689 road. This route is very steep, particularly the section closest to the road, and I noted that at one point it runs through an area of slightly boggy ground. The observable worn line of this route through the grass and vegetation was very faint. This route also continues northwards beyond Footpath No. 302089 before turning east and then north to also join the minor highway parallel to the A689.
6. A walker intending to travel north from the A689 or to join Footpath No. 302089 and then walk westwards would, in my view, be more likely to use Footpath No. 302110 than the path that the Order seeks to extinguish because this follows a more direct route, has a better walking surface, and makes further onwards connections from the minor highway.
7. However, a walker approaching the A689 from the north on Footpath No. 302127 or from the east on Footpath No. 302089 might find the less precipitous descent of the Footpath that the Order seeks to extinguish preferable to the extremely steep lower section of Footpath No. 302127. Although Footpath No. 302110 provides a link to Footpath No. 302089, the subject Footpath, which leads from it, provides a more direct and obvious link to walkers wishing to proceed eastwards and would be easier to negotiate than the steep ascent encountered on the lower section of Footpath No. 302127.
8. In this context and in the absence of any formal evidence in respect of usage of the footpath network, and the subject path in particular, the extent that the Footpath would be likely to be used by the public is not a clear cut issue. Nonetheless, there are indications on the ground that Footpath 302089 is being joined or left on approximately the indicative route of the Footpath at the point where the two paths meet. As set out above, it is likely that this is in conjunction with use of the roadstone track that has been laid. My observations at the site were that this use appears more frequent than usage of the steeper Footpath No. 302127. It is not possible to visually assess the extent of use of either the surfaced track or Footpath No. 302110 due to its metalled surface. From what I have read and from what I saw when I visited the site, I find that it is highly probable that were the whole route to be available then it is likely that it would be used.
9. The frequency of such use is harder to determine based on the evidence I have been provided with. Whilst there are indications on the ground that there is sufficient passage to cause enough trampling to make the route visible, it may be that other potential users are currently deterred from using the path due to the presence of the campsite. There is, however, nothing in the evidence to indicate that the footpath receives little or no use. From what I have read and from what I saw when I visited the site, and in the absence of any evidence to the contrary, I have to conclude that were it passable, the Footpath would be at least as well used as the other paths in the vicinity.

*The effect that the extinguishment of the path would have as respects land served by the path*

1. From the evidence that I have, all of the land crossed by the Footpath is within the same ownership and the owner of the land supports the making of the Order. The Footpath does not serve any other land or properties.
2. The evidence indicates that the land crossed by the Footpath is used on an occasional basis for camping. There is no evidence that this is a permanent or full time use of the land. The extinguishment of the Footpath would not affect this occasional use.

*Rights of Way Improvement Plan*

1. I have not been provided with a copy of any relevant ROWIP. However, the OMA have confirmed that there are no relevant provisions in the ROWIP that would have a bearing on the Order.

*Other matters*

1. As set out above, the OMA state that the landowner sought the extinguishment of the Footpath for reasons of security and safety. The OMA’s statements and other evidence elaborate slightly on this, stating that there have been burglaries and vandalism at the bunkhouse and the presence of the Right of Way makes it impossible to secure the site. The evidence is, however, scant in terms of the number of incidents or how the presence of the Right of Way contributed to these.
2. Whilst I noted that the building is relatively isolated and that the existing route of the right of way passes to the rear of the bunkhouse, it is not clear in what way extinguishing the right of way would improve security at the site given that access can be gained to the site from other points and from other Rights of Way not affected by the Order. Consequently, I do not find this argument a persuasive one or sufficient to warrant the extinguishment of the footpath.
3. The Footpath is within the North Pennines Area of Outstanding Natural Beauty (AONB). Section 85 of the Countryside and Rights of Way Act 2000 imposes a duty on the relevant body, which will include Inspectors carrying out functions in relation to an AONB, to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. There is no evidence that the closure of the right of way would have anything other than a neutral effect on the AONB.

*Whether it is expedient that the path should be stopped up*

1. The OMA set out that the Footpath is not needed as there are other nearby Footpaths that provide suitable alternative routes. However, the presence of other routes does not necessarily indicate that the Footpath is not likely to be used or is not needed.
2. There is nothing in the evidence that would indicate that the Footpath is not used and my observations at the site were that the upper section of the definitive route received enough use to create trampling of the vegetation sufficient for the line to be discernible where it meets Footpath No. 302089. From what I saw when I visited the site, I consider that the route would be used at least as often as other routes in the area.
3. The extinguishment of the Footpath would not have any adverse effects on land served by the path. Whilst the extinguishment of the path may have some benefits to the landowner, there is no compelling evidence that would demonstrate that the stopping up of the Right of Way would resolve any of the issues identified.
4. On balance, in the light of the above, and having regard to the evidence provided, I conclude that it would not be expedient for the Footpath to be stopped up.

Conclusions

1. For the above reasons and having regard to all other matters raised in the written representations, I conclude that the Order should not be confirmed.

**Formal Decision**

1. I do not confirm the Order.

John Dowsett

INSPECTOR

ORDER MAP – COPY NOT TO SCALE

