
Order Decision

Site visit made on 24 July 2015

by Mrs H D Slade MA FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 3 August 2015

Order Ref: FPS/Y2430/5/1

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Melton Borough Council Grantham Road, Bottesford Public Path Diversion Order No 2 2014.
- The Order is dated 29 July 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Melton Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. I carried out an unaccompanied site visit on Friday 24 July 2015 when I was able to walk the line of the existing footpath and also the proposed line.

The Order

2. Following publication of the Notice of the Order, Leicestershire County Council ('the County Council') pointed out to Melton Borough Council (the Order Making Authority or 'OMA') that there was a discrepancy between the grid reference quoted in the Order for Point C and the grid reference quoted in the Notice for the same location. The County Council also pointed out that the description of the proposed route given in the Order was incorrect as it described it travelling in an easterly direction from Point C to Point B whereas in fact it would run in a southerly direction from Point C and then tend in a south easterly direction to reach Point B.
3. The OMA has not commented on these matters in their submission but it is clear from the Order Plan that the proposed route does indeed travel south and then south-east from Point C and that the Order therefore requires modification if it is to be confirmed.
4. The grid references in the Order are correct in relation to the Order Plan, although the copy of the newspaper advertisement does include an incorrect grid reference for Point C. The A4 copy of the Statutory Notice submitted to the Planning Inspectorate by the OMA does not contain the same mistake, but I have no information to show that the Order was re-advertised with the mistake corrected.

5. I am satisfied that the mistake in the grid reference is not likely to have caused any prejudice because the Order map itself is clear as to the intention of the Order. However, the incorrect description given in the Order Schedule is more serious and needs to be modified if I confirm the Order.
6. I also note that the Order as made indicates that it is not to be confirmed until the works required by the Highway Authority (the County Council) have been completed to their satisfaction (Article 4 of the Order). The Order also indicates that this is the date on which the Order will come into effect.
7. I cannot delay confirmation of an order to an unspecified time in the future. The relevant regulations (The Town and Country Planning (Public Path Orders) Regulations 1993) provide the appropriate wording to allow the Order to come into effect after confirmation, upon certification. The Order has not been drafted using the appropriate phraseology and therefore, if I confirm the Order, I will need to modify the wording of Articles 3 and 4 accordingly.

The Main Issues

8. Section 257(1) of the Town and Country Planning Act 1990 provides for 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.
9. In considering whether or not to confirm such an order, I have discretion to consider the advantages and disadvantages arising from the diversion of the path in general¹, and also any disadvantage or loss which might be suffered either by the public entitled to use the route, or by those with properties near or adjoining the existing highway². I must weigh any such disadvantages against the advantages of the proposed order.³
10. I must take account of relevant case law, and the advice in the Rights of Way Circular 1/09. I must also have regard to the provisions of any Rights of Way Improvement Plan which has been produced for the area affected by the Order.

Reasons

Whether it is necessary to divert the footpath to enable development to be carried out in accordance with planning permission already granted

11. The Order cites the planning permission reference 12/0412/FUL as being the relevant development necessitating the diversion of the Order route. I am aware that a subsequent application has been made for permission to develop the land in a slightly different way, which may allow the footpath to remain on its current alignment. However I must determine this Order on the facts before me, which relate to the 2012 planning permission.
12. The plans related to the 2012 permission clearly show that part of the development will impinge upon the line of the existing footpath, and that it is therefore necessary to alter the alignment of that path. It is not unlawful for planning permission to be granted which affects the line of a highway. Section 257 of the 1990 Act provides the legislative mechanism for diverting or stopping up footpaths so affected.

¹ *KC Holdings Ltd v Secretary of State for Wales* [1990] JPL 353

² *Vasiliou v Secretary of State for Transport* [1991] 2 All ER 77

³ Paragraph 7.15 of Defra Circular 1/09

13. I am therefore satisfied that for development to be carried out in accordance with permission 12/4012/FUL it is necessary to divert part of Footpath 72.

Objection by Bottesford Parish Council

14. The Parish Council objected to the Order on the grounds that change would result in the footpath becoming a pavement.

15. I note from my site visit and from photographs submitted on behalf of the applicant (Mr Daybell) that the current route passes through a grassed area, although it does have a tarmac surface between pin kerbs. It is relatively narrow, and the photographs show that it can become a little overgrown at times. The applicant indicates that the Parish Council does cut the grass in places, but I have no details of the actual cutting regime, or confirmation from the Parish Council itself.

16. The proposed route would run alongside an access which will serve the proposed property, and already serves some existing properties. I accept that the works required by the County Council will result in a route which resembles a pavement. Nevertheless I have no information to suggest that the adjoining carriageway will be an adopted road, although the footpath itself, if diverted, would continue to be maintainable at public expense, as is the existing route.

17. Whilst I accept that the diversion of the path would alter the nature of it, the affected length is very short (approximately 60 metres) and the path continues beyond that to the south through fields. I conclude therefore that the resulting disadvantage is very limited.

Objection from Mr and Mrs Keegan

18. The principal objections raised by Mr and Mrs Keegan relate specifically to the perceived adverse effects on their property as a consequence of the proposed development. In particular they are concerned about the traffic noise, and the detrimental effect on the privacy of their bungalow. Their property does not lie adjacent to the line of the existing footpath, but on the opposite side of Grantham Road to the development. However they too express concern about the change in the nature of the footpath from a country path to an urban path.

19. Mr and Mrs Keegan's objections in relation to the effect of the development are not issues which I can take into account. I must look only at the effect of the diversion of the footpath. The alteration of the line of the footpath will have no impact on their property and I therefore place no weight on their concerns in this respect.

20. With regard to the nature of the proposed path, I have already indicated in paragraph 17 above that the alteration of the character of the route will be minimal, although I accept it will appear to be more urban for the first 60 metres or so.

Other issues

21. Mr Daybell's agents refer to the original line of the footpath having been further to the west⁴ and I note from my site visit that there is a footpath on the north side of Grantham Road called St Mary's Lane. It commences slightly to the west of new access track (on the south side of Grantham Road) which will

⁴ Their submission actually says 'east' but I believe this to be an error

provide the line of the proposed diversion. The diversion would thus bring the line of Footpath 72 closer to the onward route on the opposite side of the road. This may indeed be more akin to the original alignment, but the maps I have been provided with are on too small a scale to be certain. Furthermore the historical line of the path is not an important factor in orders of this kind. Nevertheless, the proposed diversion would provide a closer link between the two routes for those wishing to use them and this may be a slight advantage to some users.

22. No material provisions of any Rights of Way Improvement Plan have been brought to my attention for consideration.

Conclusions

23. Having regard to these and all other matters raised in the written representations I conclude that the minor disadvantages in respect of the change of character of the route which may result from the diversion do not outweigh the advantages of the Order. The Order should therefore be confirmed, but it will require modifications in the process, one of which will require advertisement.

Formal Decision

24. I propose to confirm the Order subject to the following modifications:

- In Article 3 of the Order, delete the word '*from*' in the first line and substitute the word '*on*';
- In the same Article, delete the words '*of confirmation of this Order and when*' and substitute '*on which Melton Borough Council certify that*';
- In Article 4 of the Order, delete the words '*This Order will not be confirmed until*' in the first line and capitalize the letter '*T*' in the word '*the*' immediately following;
- In the same Article delete the word '*are*' in the first line and substitute the words '*shall be*';
- In Part 1 of the Schedule to the Order, in the description of the site of the new footpath delete the letter '*n*' in the word '*an*' in the second line of text and, immediately following, insert the words '*south and then south-*' before the word '*easterly*';
- Insert the word '*of*' before the figure '*60*'.

25. Since the confirmed Order will affect land not affected by the Order as submitted, Paragraph 3 (6) of Schedule 14 to the Town and Country Planning Act 1990 requires that notice shall be given of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Helen Slade

Inspector