



Order Decision

Site visit made on 5 August 2015

by **Alan Beckett BA MSc MIPROW**

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

Decision date: **28 AUG 2015**

Order Ref: **FPS/A0665/5/1**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as the Cheshire West and Chester Borough Council (Public Footpath No 5 (part) in the Parish of Oakmere) Public Path Diversion Order 2014 (No.3).
- The Order is dated 2 April 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Cheshire West & Chester Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs, for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the route at issue on Wednesday 5 August 2015.

The Main Issues

The statutory requirements

2. Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert that part of footpath No 5 at issue to allow development to be carried out in accordance with the planning permission already given but not yet implemented.

Effect of the proposal on other parties

3. Paragraph 7.15 of Defra Circular 1/09 (version 2 of October 2009) advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing public right of way should be weighed against the advantages of the proposed order.

Background

4. Public Footpath No. 5 Oakmere commences on Chester Road (A556) at Ordnance Survey (OS) grid reference SJ 573 693 and runs in a generally north-westerly then westerly direction to Station Road (B5152) at OS grid reference SJ 556 702. Footpath 5 runs over a private access road (known in part as Farm Road and in part as Golf Course Road) which provides access to a number of residential properties and to Delamere Golf Club. The section of footpath 5

proposed to be diverted runs adjacent to the Delamere and Crown Farm quarry operations of Lafarge Tarmac Trading Limited, the applicant for the Order.

Reasons

Whether the diversion of part of footpath 5 is necessary in order to allow development to take place

5. Planning permission to link and extend Lafarge Tarmac's operations at the Delamere and Crown Farm Quarries was granted on 13 January 2015 (11/04200/MIN). The permission allows Lafarge Tarmac to work the deposits of concreting and building sand present in the land to a depth of between 8 and 10 metres below current ground level. The winning of the mineral deposits in the area includes the removal of sand from under the site of part of footpath 5. I saw from my site visit that no works had been undertaken on site which affected the existing line of footpath 5 which was open and available for use.
6. One of the objectors submits that it would be possible for Lafarge Tarmac to extract sand from the site without disturbing the footpath by conducting its quarrying operations either side of the path and extracting the minerals to the north via Crown Farm and to the south via the Marley quarry entrance. The objectors suggests that this would leave a causeway for pedestrians and that the diversion of footpath 5 would not be necessary in order for the planning permission to be implemented. However, the method by which the minerals are won and the extent of the land to be worked for those minerals is not a matter for me. Approval has been given by the Local Planning Authority for the extraction of sand from the land currently crossed by that part of footpath 5 at issue. The only question I am required to address with regard to the extraction of sand is whether it is necessary to divert the footpath in order for the approved development to be carried out.
7. The extension to the existing quarries is development for which approval has been given but has not yet been carried out. The development would result in the removal of the land which supports the existing public footpath and would render it unusable; the diversion of the footpath is therefore necessary so that the development can be lawfully carried out. I conclude that in order for Lafarge Tarmac to be able to implement the planning permission granted to it, it is necessary for part of footpath 5 to be diverted.

The extent of loss and inconvenience likely to arise either to members of the public generally, or to persons whose properties adjoin, or are near the existing public right of way as a result of the diversion of the footpath

8. There are no residential properties immediately adjacent to the Delamere and Crown Farm quarries or the proposed extension. I understand that the adjacent land is in the ownership or occupation of the Company. I conclude that the diversion would have no adverse impact upon neighbouring properties.
9. The objections made to the Order were principally concerned with the increase in the length of the path, the inconvenience the increase in length would have on those who used footpath 5 as a means of access to Delamere railway station, the loss of an historic route, the nature of the surface of the proposed route and the effect the diversion would have on some users, particularly lone women.

10. It is not disputed that the alternative path will result in an increase in length of footpath 5. The increase in distance for a journey between points A and E will only be approximately 600 metres as opposed to the 1000 metres suggested by the objectors.
11. During my site visit, I found that the proposed alternative route added around 7 minutes to a journey between points A and E. For those who use the path for the utilitarian purpose of travel to the railway station, an increase in journey time of 7 minutes may be an inconvenience. However I do not consider this would be substantial as the proposed diversion would maintain the link between points A and E as part of a walk to Delamere station albeit on a different alignment.
12. The proposed alternative route appears to be the shortest possible given the permitted development and the existence of the Marley pools. Although journey time and distance would increase as a result of the diversion and may be inconvenient for some, I do not consider the increase to be of such magnitude to warrant the non-confirmation of the Order.
13. The objectors submit that the proposed path is inferior in terms of surface and that it is readily waterlogged. At the time of my visit the path was firm and dry throughout, although there were some very small areas of the surfaced path which showed signs of having recently held water. The overwhelming majority of the path showed no signs of having been wet or being covered in large areas of mud as alleged by the objectors.
14. The section of the route between point A and a point just to the east of point D is grass whereas the remainder is of crushed stone as the path also serves as a vehicular access to the Marley pools for members of the Prince Albert Angling Society (PAAS). The surface of the proposed path is not dissimilar to that of the existing path in terms of having an unsealed hard surface over which pedestrians could expect to encounter the movement of vehicles. I consider that the surface of the proposed path is likely to prove more than adequate for pedestrian use. I consider that the public are unlikely to be unduly inconvenienced by the surface of the proposed path.
15. There are sections of the proposed path near the Marley pools where it runs between belts of trees. One of the objectors has concerns that some users, particularly lone females, may feel unsafe when walking along these sections of the path. I acknowledge that there are parts of the proposed path which are more secluded than others however use of the path in wooded areas near the Marley pools is shared with members of the PAAS who manage the fishing in the pools on behalf of the landowner. I consider that the presence of members of the PAAS in the area is likely to offer reassurance to those who may be otherwise hesitant about taking a walk along the proposed path.
16. The objectors submit that the current path was constructed around 100 years ago to provide a link between Delamere railway station and the barracks formerly located on the Fourways Quarry site and which also served as the entrance to Delamere Golf Club; in the objectors' view the diversion would result in the loss of this historic route.
17. While the diversion would result in a section of Farm Road and Golf Course Road being lost, that section of the route south-east of A and west of B will be retained for public use and those pedestrians travelling east from point E will

be able to use the new bridleway which runs to Stoneyford Lane from point B. I accept that for those who wish to walk the entirety of the historic line of footpath 5, the loss of A – B will represent a loss of amenity. However sufficient of the current route of the footpath will remain unaffected by the quarry extension for users to be able to follow at least some of the historic line of the path.

Whether the Order should be confirmed

18. The Order has been made to enable Lafarge Tarmac to execute the planning permission already granted. It is clear that the permitted development of the extension to Delamere and Crown Farm Quarries would remove the land supporting part of footpath 5 and I have concluded that the proposed diversion would not result in significant inconvenience or loss to the public in general.
19. The advantage of the order is that the planning permission already granted can be carried out whilst retaining use of footpath 5. Whilst I consider that there will be some adverse impact upon those members of the public who seek to use footpath 5 for utilitarian purposes, I do not consider that the impact upon the public to be significant enough to outweigh the advantages to be conferred by the confirmation of the Order.

Conclusion

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

Formal Decision

21. I confirm the Order.

Alan Beckett

Inspector