
Order Decisions

Site visit made on 12 August 2015

by Alan Beckett BA MSc MIPROW

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

Decision date: 15 September 2015

Order Ref: FPS/W1850/3/7 (Order A)

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Herefordshire Council Footpath WZ2 (Part) Walterstone Public Path Extinguishment Order 2013.
- The Order is dated 9 August 2013 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections or representations outstanding when Herefordshire Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Order Ref: FPS/W1850/6/2 (Order B)

- This Order is made under Section 26 of the 1980 Act and is known as the Herefordshire Council Footpath WZ2 (Part) Walterstone Public Path Creation Order 2013.
- The Order is dated 9 August 2013 and proposes to create the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections or representations outstanding when the Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.

Procedural Matters

1. I undertook an inspection of the public right of way at issue in the company of a representative of the Council and a representative of one of the adjacent landowners. The Order has been determined on the basis of the written representations forwarded to me and on my observation of the site on Wednesday 12 August 2015.

The Main Issues

Order A

2. Section 118 (2) of the 1980 Act requires that before confirming the Order I should be satisfied that it is expedient to stop up the footpath in question having regard to the extent that it appears that it would, apart from the Order, be likely to be used by the public; and that I should consider the effect which the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation.

3. Section 118 (5) provides that where proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order then in considering the likely extent of use of the path proposed to be extinguished, regard may be had to the extent to which the creation order would provide an alternative path.

Order B

4. Section 26 (1) of the 1980 Act requires that the factors to be considered in regard to the creation of a footpath are whether there is a need for a footpath and that it is expedient to create that footpath having regard to:
 - (a) the extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act.

Orders A and B

5. In determining whether or not to confirm the Orders, sections 26 (3) and 118 (6A) of the 1980 Act require that I should give consideration to any material provision of a rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.
6. Furthermore, I need to give consideration to what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and natural beauty of the area³.

Reasons

Order A

The extent to which the footpath would, apart from the Order, be likely to be used by the public

7. Footpath WZ2 commences on the road leading to Walterstone and runs in a generally westerly direction over pasture fields to the flood plain of the River Monnow where the path crosses the river and into Monmouthshire via a footbridge. The path forms part the Monnow Valley Trail, a long-distance footpath linking Herefordshire and Monmouthshire and is waymarked as such at the roadside.
8. The bridge which is currently in place over the river is a replacement for a bridge which had been washed away some years ago. The replacement bridge has been constructed approximately 20 metres to the south of the site of the original bridge and therefore does not connect with footpath WZ2 which remains on its original alignment. Although the Council has the power under section 92 of the 1980 Act to reconstruct a bridge up to 200 yards from its

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006

³ Section 11 of the Countryside Act 1968

original location, this provision has no effect upon the public right of way leading to the bridge. The Council has made the two Orders which are before me for determination to alter the course of the footpath and make a more direct link with the new footbridge.

9. The current line of the footpath is obstructed by a double fence and ditches at point C, by a fence and ditch at point B and by the absence of a means of crossing the river at A. It was only possible to walk from point D to the new footbridge by deviating away from the current line of the footpath through the scrub woodland to the south and by crossing a barbed wire fence which runs parallel to the proposed route between point F and the eastern end of the footbridge.
10. Although the current line of the path is obstructed, in accordance with the provisions of section 118 (6) of the 1980 Act, I have disregarded the obstructions at points A, B and C and have considered the matter as if the footpath were open and available and free from the obstructions which currently limit its use. I consider that if the path was free from obstructions it is highly likely that it would be used by those who seek to complete the Monnow Valley Walk or who wish to undertake that part of the walk between Walterstone and Craswell.
11. Given that the path forms part of a local long distance walk, I consider that there would be a moderate level of use of the path by the public if it were free from the restrictions identified in paragraph 9 above.
12. The conclusion that there is likely to be some use of the path and that use would be moderately extensive would ordinarily lead to the conclusion that it was not expedient to extinguish the path. However, as noted above, section 118 (5) of the 1980 Act provides that consideration can be given to the extent to which the concurrent creation order (Order B) would provide an alternative path.
13. The path proposed to be created by Order B would be at most 20 metres away from the current route; with the installation of suitable structures at field boundaries the proposed path would provide a usable link between point D and the new footbridge over the river. In my view, the route which would be created by Order B would provide a satisfactory alternative to the current path. It follows that in such circumstances I consider that that the public would not be disadvantaged by the extinguishment of the current line of footpath WZ2.

The effect which the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions as to compensation

14. There is no evidence before me from which I could conclude that extinguishment of part of WZ2 footpath would have any adverse effect in respect of this requirement of Section 118 of the 1980 Act.

Conclusion

15. I conclude that the requirements of section 118 (2) which are set out in paragraph 2 above are met in respect of this Order and that it is therefore expedient that it be confirmed.

Order B

Whether there is a need for the footpath

16. As noted above, footpath WZ2 forms part of the Monnow Valley Trail and the obstructions to the current line of the footpath are such that other than deviating around the obstructions, it is not possible to follow the line of the path westwards from Point D. The Council submits that the Monnow Valley Trail is an important tourist route and that there is a wide demand for a path to the river to be made available, both from local members of the public and tourists visiting the area.
17. It is not disputed by any party that there is a need for an unobstructed path to facilitate access along the Monnow Valley Trail. The current line of footpath WZ2 is obstructed and the replacement footbridge over the Monnow has been located approximately 20 metres further south from its former site to lessen the risk of the bridge being washed away in the future. As part of a promoted long-distance footpath, I am satisfied that there is a need for the creation of a footpath on the alignment shown in the Order plan.

Whether it is expedient to create the footpath having regard to

(a) the extent to which the creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

18. The creation of the footpath would provide a link in an important recreational route, and allow both tourists and those resident in the area to cross the county boundary on a path free from obstructions. I consider that the creation of an alternative to the existing route of WZ2 would enable recreational walkers to follow the Monnow Valley Trail on a route similar in character to that which will be extinguished by Order A. The provision of a route free from obstructions will significantly add to the convenience and enjoyment of both residents and those visiting the area as tourists.

(b) the effect which the creation of the footpath would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

19. The path which would be created by Order B crosses land in two ownerships. Mr Probert owns the field crossed by the proposed alternative D – H and objects to Order B on the grounds that the path would be moved closer to the centre of his field. It is argued that the potential agricultural yield from the field would be reduced by the relocation of the path and that the increase in length of the path through this field would increase the risk to pedestrians posed by the presence of cows and calves in the spring months.
20. Mrs Phillips owns the land between points H – G – F and has no issue with the proposed realignment of footpath WZ2 but objects to the proposed installation of pedestrian gates at G and H. Mrs Phillips submits that such structures are wholly inappropriate at field boundaries where livestock is present during the summer months; were such gates to be left open, both livestock and pedestrians would be put at risk.

21. Both objectors note that although a bridge is specified as a means of crossing the Monnow, there is no reference in the Schedule as to the means by which the footpath will cross the ditches at H and G.
22. Turning to Mr Probert's objection. The proposed relocation of the path is the minimum required to provide a reasonably direct route from point D to the county boundary at E. The proposed creation would increase the length of the path within Mr Probert's field but only by approximately 8 metres; any increase in risk to pedestrians from cows and calves is therefore likely to be marginal at best given the degree of risk which the public are already exposed to by the current D – C alignment of the path.
23. I acknowledge that the increase in length of the path through Mr Probert's field would place an additional burden on the land and may result in a reduction in productivity. If the creation of the footpath does have a demonstrable negative effect, then compensation for damage or disturbance in the enjoyment of the land may be payable under the provisions of section 28 of the 1980 Act. It would be for those who claim that their interest in the land has been diminished to demonstrate to the Council that this was the case.
24. However, given that the land is already burdened by the current line of WZ2, I do not consider that the quantum of compensation which may become payable is likely to be of such magnitude to warrant the non-confirmation of the Order.
25. As regards Mrs Phillips' objection to the installation of pedestrian gates, the Council submits that the type of gate which will be installed will be self-closing and designed to comply with BS5709:2006. It is the Council's policy to install the least restrictive structure at field boundaries on all new rights of way within the county; the Council submits that such structures have been installed on many paths without issue.
26. Section 149 of the Equality Act 2010 imposes the public sector equality duty on public authorities to advance the equality of opportunity between people who have a disability and those that do not; this duty is relevant when considering the provision of structures on new rights of way in the countryside. Guidance offered to local authorities by Defra⁴ is for the minimum number of structures to be installed and for each of those structures to be the least restrictive possible.
27. Self-closing gates of the kind described by the Council in its submission have been designed to prevent the gate being accidentally left open by users. I have encountered such gates on a number of occasions and in my view they strike a reasonable balance between the needs of land managers for stock-proofing their fields and the needs of users for the least restrictive means of crossing a field boundary.
28. The provision of self-closing gates at points H and G is compliant with the Council's own policy set out in its Rights of Way Improvement Plan (ROWIP), with published guidance and is also consistent with the Council's obligations under the Equality Act 2010. If the creation of the footpath with gates at H and G does have a demonstrable negative effect upon Mrs Phillips' agricultural activities, then compensation for damage or disturbance in the enjoyment of the land may be payable under the provisions of section 28 of the 1980 Act. It

⁴ Annex C to Authorising structures (gaps gates and stiles on rights of way) (version 1 2010); Defra 2010

would be for those who claim that their interest in the land has been diminished to demonstrate to the Council that this was the case.

29. The Council acknowledges that the ditches at H and G will need to be bridged to carry the footpath over them. The means of crossing the ditch is not set out in the schedule to the Order and I propose to modify part 1 of the schedule to record that the ditches will be crossed by bridges.

Conclusion

30. I conclude that the requirements of section 26 (1) which are set out in paragraph 4 above are met in respect of this Order and that it is therefore expedient that it be confirmed with modifications.

Orders A and B

Consideration given to the provisions of a Rights of Way Improvement Plan (ROWIP)

31. The Council's Rights of Way Improvement Plan draws broad strategic conclusions to identify improvements to the rights of way network within the county. The proposed extinguishment and creation accords with level 4 of the Statement of Priorities, and is compatible with the provisions regarding width and structures.

The impact upon forestry, agriculture, nature conservation and natural beauty

32. There is no evidence before me to suggest that the confirmation of the extinguishment and creation orders would have any adverse impact in relation to forestry, biodiversity or the natural beauty of the countryside. Other than the issues raised by Mr Probert regarding productivity and by Mrs Phillips regarding pedestrian gates, there is no evidence before me to suggest that the confirmation of the extinguishment and creation orders would have any adverse impact in relation to agriculture.

Other matters

33. It was submitted on behalf of Mr Probert that although he had agreed to the reconstruction of the bridge over the Monnow he had understood that it was not necessary to move the existing footpath. As noted in paragraph 8 above, section 92 of the 1980 Act provides for the reconstruction of a bridge up to 200 yards from its original location but has no effect upon the highway served by the bridge. In order for there to be a lawful means of access to the reconstructed bridge it is necessary to realign the footpath. The extinguishment and creation orders under consideration are a means of achieving that end.
34. Although pedestrian gates are to be installed on the line of the new section of footpath WZ2, three stiles will remain in place on that section of path unaffected by the extinguishment and creation. As and when these stiles require replacement it will be for the Council to negotiate with the relevant landowner regarding the type of structure which is appropriate.
35. On behalf of Mrs Phillips, Councillor Powell requested that the costs involved in providing ditch crossings and gates was taken into account when reaching a decision to ensure that what was proposed was the most cost effective solution. The implementation of the creation Order and the costs associated

with the provision of access for the public through the field boundaries at points H, G and F are matters which the Council will have considered before publishing the Orders and are not within my remit.

Formal Decisions

Order A

36. I confirm the Order

Order B

37. I confirm the Order subject to the following modifications:

in Part 1 of the schedule, line 6 delete 'crossing' and insert 'crossed by a bridge'; in line 9 delete 'traverse a ditch crossing' and insert 'a bridge over a ditch'.

Alan Beckett

Inspector