
Order Decision

Site visit carried out on 25 September 2015

by Peter Millman BA

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

Decision date: 9 October 2015

Order Ref: FPS/P0430/4/41

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and under Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Buckinghamshire County Council (Public Footpath No. 29, Parish of Great and Little Kimble) Public Path Diversion Order 2014.
- The Order is dated 25 August 2014 and proposes to divert a footpath as shown on the Order Map and described in the Order Schedule.
- There was one objection outstanding when Buckinghamshire County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order.

Main issues

1. The Order was made by the County Council in the interests of the owner of the land crossed by the footpath. Section 119(6) of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient in the interests of the owner, or of the public, or both, that the path should be diverted. The further tests for confirmation are set out in the remainder of s119(6) and in s119(6A) of the 1980 Act.

Reasons

Background

2. The Order proposes to divert a footpath crossing a small area of land for which planning permission has been granted for continued use as a site for static caravans for gypsies and/or travellers. The path would be moved to run round the edge of a paddock.
3. When the County Council consulted various parties prior to the making of the Order, Great and Little Kimble cum Marsh Parish Council ("the Parish Council") stated: *[We] do not believe the reasons put forward [for diverting the footpath] are adequate and substantial. You quote that the site is 'active', this was not the case prior to the current residents moving on to the site without planning permission and then applying retrospectively for that permission. We are sure that they were fully aware of the route of the footpath prior to moving onto the site and believe a more substantive explanation of how the land can be better used and for what purpose is necessary.*
4. When the Order was made the Parish Council decided to sustain its objection. There is no other objection to the diversion.

The tests for confirmation

5. For a landowner-benefitting diversion order to be confirmed, the diversion must be expedient in the landowner's interest and not substantially less convenient to the public. It must additionally be expedient to confirm the order, taking account in particular of the effect of the diversion on public enjoyment of the path, the effect on other land served by the path and the effect on land over which the diverted path would run, as well as any relevant provisions of the local rights of way improvement plan.
6. Although the Parish Council in its objection questions the adequacy and substance of the reasons put forward in support of the diversion, it provides no particulars of their alleged inadequacy or insubstantiality. The applicant for the Order, who is the son-in-law of the landowner, stated, giving reasons, that the diversion would make the land safer and more secure, and that it would be easier to graze horses. The landowner agreed to the application. The Parish Council does not dispute the veracity of these statements. Other grounds of objection put forward by the Parish Council appear to be concerned with planning matters and the future use of the land crossed by the path. I cannot give them any weight. It is not material whether the occupants of the land were aware of the footpath when they moved onto it.
7. No individual, or organization representing walkers, has maintained an objection to the Order, or argued that it would result in a negative effect on enjoyment or convenience. No adjoining landowner has objected to the Order.
8. I visited the site of the current and proposed paths. The route over which a public right of way currently runs is neither used nor usable. The route of the proposed diversion has been cleared and appears to be in use. It is some 35 metres longer than the current path, and is on level ground. I observed no features that would be likely to make it substantially less convenient than the current path, or have any negative effect on its enjoyment by the public. I conclude that the tests for confirmation set out in the legislation are met.

Conclusion

9. Having regard to these and all other matters raised in the written representations I conclude that it is expedient to confirm the Order.

Formal Decision

10. I confirm the Order.

Peter Millman

Inspector