



## Order Decisions

Hearing held on 3 September 2015

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 14 October 2015**

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### **Order Ref: FPS/Y3940/6/1**

### **Referred to as 'Order A'**

- This Order is made under Section 26 of the Highways Act 1980 ("the 1980 Act") and is known as The Wiltshire Council West Ashton 1 (Part) Creation Order 2014.
- The Order was made by the Wiltshire Council ("the Council") on 30 October 2014 and proposes to create a section of footpath, as detailed in the relevant Order Map and Schedule.
- There was one objection outstanding at the commencement of the hearing.

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

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### **Order Ref: FPS/Y3940/3/3**

### **Referred to as 'Order B'**

- This Order is made under Section 118 of the 1980 Act and is known as The Wiltshire Council West Ashton 1 (Part) Extinguishment Order 2015.
- The Order was made by the Council on 3 March 2015 and proposes to extinguish a section of footpath, as detailed in the relevant Order Map and Schedule.
- There was one objection outstanding at the commencement of the hearing.

**Summary of Decision: The Order is confirmed.**

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### **Procedural Matters**

1. I held a hearing into the Orders on 3 September 2015 at the White Horse Business Park, Trowbridge having undertaken an unaccompanied visit to the site the previous day. I undertook a further visit following the close of the hearing accompanied by Ms Burke for the Council and the objector, Mr Morland. On each occasion I was approached by a person and had to explain the purpose of the visit. However, I did not enter into any discussion regarding the merits of the Orders.
2. The Council confirms that it complied with all of the statutory requirements, including a consultation with West Ashton Parish Council prior to the making of the Orders. I accept that, if confirmed, Order A should be modified to state that the parish council were consulted in accordance with Section 26(3) of the 1980 Act.
3. All of the points referred to below correspond with those delineated on the respective Order Maps.

### **Main Issues**

4. Before confirming Order A, which is made under Section 26 of the 1980 Act, I must be satisfied that:
  - (a) there is a need for the footpath included in the Order, and
  - (b) it is expedient to confirm the Order having regard to:

- (i) the extent to which the path 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
  - (ii) the effect that the creation of the path would have on the rights of persons interested in the land, having regard to the provisions for compensation.
5. Before confirming Order B, which is made under Section 118 of the 1980 Act, I must be satisfied that it is expedient to extinguish the footpath 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 right of way would have as respects land served by the path, having regard to the provisions for compensation.
6. In considering Order B, I shall disregard any temporary obstructions to the existing right of way in accordance with Section 118(6) of the 1980 Act.
7. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the two Orders.
8. Section 118(5) of the 1980 Act specifies that in considering the test outlined in paragraph 5(a) above, regard can be given to the extent to which an Order under Section 26 of the Act would provide for an alternative path. Paragraph 5.54 of Department for Environment, Food and Rural Affairs Circular 1/09 advises that account should be taken of the convenience of the route proposed compared to that which is to be extinguished.

### **Background Matters**

9. The current route of West Ashton Footpath No. 1 proceeds through the front and rear gardens and garage of the property known as Manor View. It is apparent that the current owner was unaware of this issue until the proposed sale of the property relatively recently.
10. An alternative path has existed for some time which primarily proceeds between the fences and hedges of the properties known as Montrose, Manor View and 17A Bratton Road. Information supplied by Mr Morland and a supporter (Cllr. Prickett) is supportive of the route formerly following a straight course when a farm existed in this locality.
11. An Order was made to modify the alignment of Footpath No. 1<sup>1</sup> in this locality but the Council did not wish to pursue the confirmation of the Order on evidential grounds and it was rejected in any event by the Planning Inspectorate<sup>2</sup>. The Council then made Orders to extinguish the path through Manor View and create a public footpath over the present alternative route. However, the former had to be re-made having again been rejected by the Planning Inspectorate.

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<sup>1</sup> In accordance with Section 53 of the Wildlife and Countryside Act 1981

<sup>2</sup> Acting on behalf of the Secretary of State

## Reasons

### Order A

*Whether there is a need for the footpath included in the Order*

12. The need for the footpath would arise if a section of West Ashton Footpath No. 1 is extinguished by virtue of the confirmation of Order B.

*The extent to which the path would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area*

13. It is apparent from the information supplied by Cllr. Prickett that the path is currently well used by local residents in order to continue over West Ashton Footpath No. 1. In terms of the provision of this path as an alternative to the section included in Order B, the proposal has the support of the parish council.
14. The Council states that the existing gate, which is not included in the Order, would be removed if the Order is confirmed and any request for such a structure would need to be considered in light of the use of the adjacent land. There is also a wall and a gap stated to be 0.48 metres wide at point A. The Council's request at the hearing that the Order is modified by the removal of this pinch point addresses Mr Morland's objection to some extent. However, he remains concerned about a section of the path having a varying width of 1.3-1.6 metres.
15. No information has been provided in relation to the purpose of the wall and it restricts access at this point to some extent. I accept that the public would benefit from its removal and, if confirmed, the Order should be modified accordingly. In my view, there would be no need to advertise this modification<sup>3</sup>, which is required if the modification affects land not included in the original Order. The path is described in the Order as being 1.3-1.6 metres wide for a distance of 33 metres from point A. This width would remain if the Order is confirmed and is distinct from the physical pinch point which presently exists at point A.
16. I address below the provisions of the ROWIP. There is no recorded width for West Ashton Footpath No. 1 in the definitive statement. This means that I cannot assume that it is any wider than the minimum width set down in Order A. A width of 1.3 metres would be sufficient to accommodate pedestrian users in this locality, including the elderly and people with limited mobility. It should also be sufficient to accommodate wheelchair users or people accompanied by a pushchair. However, regard needs to be given to the nature of the unaffected section of Footpath No. 1 to the east, which is likely to act as a barrier to particular users in light of its surface and gradient. I also accept to some extent the point made by the Council that as a matter of courtesy people often wait in order to allow another person to pass more comfortably.
17. Overall, the section of the path included in the Order is used and in my view it will continue to be used for the most part by local residents.

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<sup>3</sup> In accordance with paragraph 2(3)(a) of Schedule 6 to the 1980 Act

*The effect that the creation of the path would have on the rights of persons interested in the land*

18. Mr and Mrs Metcalf own the land crossed by the initial section of the path from point A and they do not object to the Order. It is apparent that the remainder of the path now crosses land in the ownership of Mr Puntis. I was approached by Mr Puntis during the accompanied site visit and there was nothing to suggest that he opposes the creation of the path. None of these parties attended the advertised hearing.

*The consideration of the Order in light of any material provision contained in a ROWIP*

19. In reaching my decision, I consider that I should have regard to the present ROWIP of 2015-2025, which was adopted after the Order was made, and not the former plan. The provision considered to be relevant is found in policy 1B.2 of the ROWIP which is headed "*Public Path Order Applications and their Prioritisation*". The sixth bullet point within this section states "A diverted/newly created path should meet the Council's minimum standard width: Footpath: 2 metres". Notwithstanding that there appears to have been no application for a Creation Order, the ROWIP sets out the Council's minimum widths for newly created paths. In my view this part of the ROWIP sets down the expected widths for the different types of rights of way.

20. I am not constrained by the ROWIP but I must have regard to the relevant policy when reaching my decision.

### **Order B**

*The extent to which it appears that the path would, apart from the Order, be likely to be used by the public*

21. In considering this issue I have disregarded the fact that the path is obstructed by the garage of Manor View. At the hearing, it was generally accepted that in the absence of the path included in Order A, the path in Order B would be used by the public. However, whilst the former remains in place, I consider it likely that this will be the route of choice rather than the path through the gardens of Manor View.

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

22. There is no evidence to suggest that the extinguishment of the path would adversely impact upon any land served by it.

*The consideration of the Order in light of any material provision contained in a ROWIP*

23. Nothing has been provided to indicate that the Order is contrary to any material provision contained in the relevant ROWIP.

### **Whether it is expedient to confirm the Orders**

24. I find that, when considering the Orders together, there is a need for the footpath included in Order A and it would add to the convenience of local residents. Whilst there is an expectation from the ROWIP that newly created

footpaths will have a width of 2 metres, the minimum width of the proposed path would be sufficient for the public in this locality. The removal of the existing gate and pinch point will further assist with access.

25. Overall, there is nothing to suggest that the proposed path is any less convenient than the path included in Order B. Discounting the obstruction by the garage, the proposed path would in my view continue to be used in preference to the section recorded on the definitive map where it passes through the front and rear gardens of Manor View.
26. For these reasons I conclude that it is expedient to confirm the two Orders.

### **Conclusions**

27. Having regard to these and all other matters raised at the hearing and in the written representations I conclude that Order A should be confirmed with modifications and Order B confirmed as made.

### **Formal Decisions**

#### ***Order A***

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

- Insert underneath the first paragraph in page 1 of the Order, "West Ashton Parish Council has been consulted as required by Section 26(3) of the 1980 Act".
- Delete from the seventh line of the description in the Order Schedule, "with a pinch point of 0.48 metres at point A".

#### ***Order B***

29. I confirm the Order.

*Mark Yates*

**Inspector**

## **APPEARANCES**

### **For the Council**

Ms B. Burke

Definitive Map and Highway Records Team  
Leader

### **Supporter**

Cllr H. Prickett

Local Member for the Wiltshire Council

### **Objector**

Mr F. Morland