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## Order Decisions

Site visit made on 22 September

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 26 October 2015**

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### **Order Ref: FPS/H0738/7/3 – referred to as Order A**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as The Council of the Borough of Stockton-on-Tees Modification of the Definitive Map (Public Footpath No. 21 – Stockton) Order 2014.
- The Order is dated 12 March 2014 and proposes to modify the Definitive Map and Statement for the area by deleting a short section of Public Footpath No. 21 near Staypleton House and adding a footpath from Footpath 21 to Darlington Lane, Stockton, as shown on the Order Map and described in the Order Schedule.
- There were 2 objections outstanding when Stockton-on-Tees Borough 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/H0738/5/3 – referred to as Order B**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Stockton-on-Tees Borough Council (Public Footpath No. 21 – Stockton) Public Path Diversion and Definitive Map and Statement Modification Order 2014.
- The Order is dated 12 March 2014 and proposes to modify the Definitive Map and Statement for the area by diverting a section of Public Footpath No. 21 running between a point to the north of properties in Ridley Court and Parsons Walk, Stockton, as shown on the Order Map and described in the Order Schedule.
- There were 3 objections outstanding when Stockton-on-Tees Borough 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 a modification that does not require advertising.**

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### **Procedural Matters**

1. I made an unaccompanied site inspection on Tuesday 22 September 2015 when I was able to walk the whole of the Order A route and view the new route proposed in Order B.
2. In writing this decision I have found it convenient to refer to points marked on the Order Maps. I therefore attach copies of these maps.

## **The Main Issues**

3. In respect of Order A the requirement of Section 53(3)(c)(i) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is not shown on the definitive map and statement subsists along the Order route.
4. In addition, the requirement of Section 53(3)(c)(iii) of the 1981 Act is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
5. In respect of Order B, Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert or extinguish the footpath in question in order to allow development to be carried out in accordance with a planning permission already given but not implemented.
6. In addition, consideration should also be given to any disadvantages or loss likely to arise as a result of the diversion or extinguishment, either to members of the public, or to persons whose properties adjoin or are close to the existing footpaths.

## **Reasons**

7. On 17 January 2012, Stockton-on-Tees Borough Council, the Order Making Authority (OMA), granted planning consent for the change of use of open land crossed by the Order routes to private residential curtilage/garden, diversion of public right of way (footpath Stockton 21), erection of boundary fencing and erection of private garage.
8. During consideration of the application for planning consent it was noted that there appeared to be an anomaly in the definitive map with regard to the alignment of Footpath 21. Accordingly the OMA decided to make 2 orders, the first to correct the definitive map (Order A) and the second to divert part of Footpath 21 to allow the permitted development to be carried out and also to further modify the definitive map to record the new route of the path (Order B).

## **Order A**

9. The original definitive map for the area, produced by Durham County Council (relevant date 1 November 1952), shows Footpath 21 continuing to Darlington Lane along the route shown on the Order Map. The accompanying statement also describes the route as starting at Darlington Lane. A review of the definitive map in 1967 showed the same route for the path.
10. Later editions of the definitive map prepared by Cleveland County Council in 1976 and 1990 show Footpath 21 as a cul de sac path terminating at Staypleton House as does the current map (relevant date 1998). However, the current definitive statement continues to describe the route as starting at Darlington Lane.
11. Neither the OMA nor Durham County Council have any record of a legal event that would have resulted in the route of the path being changed and the

Ramblers' Association has also confirmed that it has no record of such an event.

12. In these circumstances, the OMA has concluded that the route of Footpath 21 was wrongly transcribed on to later versions of the definitive map following the transfer of responsibility for rights of way between authorities and no other party has suggested that this is not the case.
13. On my visit I noted that the current route of the footpath being used by the public is as shown on the Order Map (A).
14. In the light of this evidence, it is also my view that the current definitive map is incorrect in its depiction of the route of Footpath 21 and that it would be appropriate for the Order to be confirmed so as to correct the error.

### **Order B**

*Whether it is necessary to divert or extinguish the footpath to carry out the development permitted*

15. As already mentioned, planning consent was granted in January 2012 for the change of use of open land crossed by the Order routes to private residential curtilage/garden, diversion of public right of way (footpath Stockton 21), erection of boundary fencing and erection of private garage.
16. Although on my visit I saw little evidence of work having taken place to implement the planning permission, the OMA has confirmed that the planning officer is satisfied that sufficient work has commenced to ensure that the permission has not expired and is still extant.
17. The current route of Footpath 21 between Points A and E on the Order Map (B) runs through the proposed garden, boundary wall and fence and the garage. It would therefore appear that the diversion of the path is clearly necessary to enable the approved development to take place.

*The effect of the diversion and extinguishment on members of the public, or persons whose properties adjoin or are close to the existing footpath*

18. The proposed new route of the footpath is approximately 15m longer than the existing route. In my view this short additional distance would not make the new path significantly less convenient to the public.
19. It is proposed that the new path will have a 2m wide surfaced section and a 0.5m grass verge on either side. This would be at least as commodious to the public as the current path which is mostly around 2m wide with a mainly grass surface.
20. I have seen no evidence of any likely adverse effect of the proposed diversion on persons whose properties adjoin or are close to the existing footpath and the owner of the land crossed by the path has applied for the diversion to be made.
21. No party has objected to the principle of the footpath being diverted on to the proposed new route.

22. In these circumstances, it is my view that the proposed diversion will have no significant adverse effect on members of the public, or persons whose properties adjoin or are close to the existing footpath.

### **Other Matters**

23. One of the 2 objections lodged in relation to these Orders simply states that the objectors are opposed to changes that would impact on residents' access and enjoyment of the land in question and to changes that might have a detrimental effect on the health and safety of residents using the area. Subsequent to the lodging of the objection no further evidence has been submitted to suggest that the confirmation of the Orders would have negative effects on residents and I have concluded on the basis of other evidence that the proposed diversion will have no significant adverse effect on members of the public, or persons whose properties adjoin or are close to the existing footpath.
24. The other objector initially raised a number of questions regarding the consultation periods for the Orders and the accuracy of the way in which the footpaths are described in the Orders. I have considered these matters carefully and overall have concluded that both Orders are properly made and express their effect in a clear enough manner to render them fit for their purpose.
25. With regard to the description of the width of the footpath, Order A states that this varies between 2m and 5.5m. Current guidance suggests that it is good practice for the width of paths to be specified as precisely as possible. However, in this case as the description relates to the whole of Footpath 21 and not just the section affected by the Order. I have no basis on which to propose modifications to make the description more precise.
26. In the Schedule to Order B, Part 3, the description of the width of the route seems to be incomplete in that it states that the width varies but only specifies a single width (2m plus verges). I therefore propose to modify the Order to specify that the width varies between 2m and 5.5m so as to bring it into line with the description in Order A. Again, I have no basis to propose a more precise width as the description relates to the whole length of the path. However, the width of the section of path to be diverted is described precisely in Part 2 of the Schedule. The modification proposed will not affect any land not otherwise affected by the Order and will not therefore require advertising.
27. In addition, the objector points out that the description of another section of the footpath, not affected by the current Orders, is also incorrect as a result of changed circumstances. Again, I am not in a position to comment on this but note that the description referred to is that already contained in the current definitive statement.
28. It is further suggested that the proposed extinguishment of footpath section A to B in Order A is unnecessary as, following the diversion proposed in Order B, this would no longer be a viable right of way. However, in my view it is important that each Order is considered separately against the relevant criteria set out in the appropriate Acts and this is how I have dealt with them.

## **Conclusions**

29. Having regard to these and all other matters raised, I conclude that Order A should be confirmed as made and that Order B should be confirmed subject to the modification referred to above.

## **Formal Decision**

30. Order A is confirmed as made. Order B is confirmed subject to the following modification:

- In the Schedule to the Order, Part 3, add after the end of the description of the width of the path the words "*...and 5.5 metres*".

*Barney Grimshaw*

**Inspector**