



Order Decision

Hearing held on 10 November 2015

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 18 NOV 2015

Order Ref: FPS/Y3940/4/12

- The Order is made under Section 119 of the Highways Act 1980 and section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Wiltshire Council Chapmanslade 12 (part) Diversion Order and Definitive Map and Statement Modification Order 2014.
- The Order is dated 15 July 2014 and proposes to divert part of a footpath running over land in the ownership of Dye House Farm onto a southerly alignment, as shown in the Order map and described in the Order Schedule.
- There were three objections and representations outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

Temporary circumstances

1. During my site visit I found the existing route of Chapmanslade Footpath 12 ("FP12") was obstructed by post and rail fencing north-west of point A¹ and a locked gate, wall and recent development², which would have prevented access from point A. As I walked the existing route west – east (B – A) I was able to walk through, albeit potentially not on the exact line, then inspecting the proposed route walking east – west (C – B).
2. Sub-section 6 of section 118 of the Highways Act 1980 ("the 1980 Act") states that "*...any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.*" Although section 119 of the 1980 Act, under which this Order is made, does not contain such wording, longstanding guidelines have required Inspectors to treat temporary circumstances in the same manner as under s118. I shall consider the existing route in this way, as I am satisfied that any obstructions are temporary.

Drafting of the Order

3. The objector believed that the way in which the Order was drafted may indicate that the proposed route was complete, as there was no certification required. Whilst the proposed route is in place, and obviously well-used, the existing route remains a public right of way unless and until confirmation of a relevant Order. I am satisfied that the Order, which allows 56 days for any additional

¹ Points A, B and C are shown on the Order plan

² Under planning application number 14/01613/FUL

works to be carried out if necessary, has been correctly drafted by reference to the regulations³.

Procedural Matters

4. I made an unaccompanied site visit on 9 November and held a public hearing into the Order at Chapmanslade Village Hall on 10 November 2015. No-one requested a further accompanied site visit following the close of the hearing.

Main Issues

5. The Order has been made in the interests of the owner of the land crossed by FP12. I must be satisfied it is expedient to confirm the Order in that interest.
6. The statutory objector raised concerns regarding the future maintenance of the footbridge erected on the proposed route and I have dealt with this, so far as appropriate, in relation to convenience to the public. No other matters were raised in objection. A number of people wrote and spoke in support of confirmation of the Order, generally referring to matters relevant to the legislative matters under section 119 of the 1980 Act.
7. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. On submission of the Order Wiltshire Council, the order-making authority ("the OMA"), had referred to relevant provisions in their ROWIP, 2008 - 2012. At the hearing they introduced the current ROWIP, the Wiltshire Countryside Access Improvement Plan 2015 - 2025, which they indicated had been adopted since the submission of the Order.

Reasons

Whether it is expedient, in the interests of the owner, that the footpath in question should be diverted

8. The application was made by the owner of Dye House Farm, Corsley, who purchased the property in 2012. The representative from Chapmanslade Parish Council indicated that the eastern end of the route of FP12 was often prevented by the previous occupant and welcomed the proposed diversion.
9. I accept the argument of the applicant that it would be to his advantage to divert the eastern end of FP12. The current route runs close to the main property, crossing a lawn near a paved seating area and passing alongside⁴ a new covered swimming pool enclosure, wall and additional accommodation.
10. I consider that it is expedient, in the interests of the owner of the land that this part of the footpath should be diverted to provide privacy at the property.

Whether the new route will be substantially less convenient to the public

11. I agree with the supporters to the Order that the proposed route is more direct, following an obvious route straight across the fields between points B and C, which will be more convenient to the public than the curving route B - A. The OMA note that the proposed route is slightly shorter as a result.

³ The Public Path Order Regulations 1993, SI 1993 No.11

⁴ It may be that the definitive line is obstructed by the new development in whole or in part

12. Whilst the bridge on the proposed route is narrower than the existing it benefits from handrails, which are not present on the existing bridge. The OMA state that it conforms to the relevant British Standard, BS5709, with the cost of installation met by the applicant. In comparing the bridges I am satisfied that the new route would not be substantially less convenient in this respect.
13. Reference was made to the alteration at point B from stiles to a kissing gate, which users found easier. This alteration is supported by the ROWIP which indicates the benefits of replacing stiles with gaps or gates to make the network more accessible for users.

The effect of the diversion on public enjoyment of the path as a whole

14. Some of those speaking in support of the Order referred to feeling more comfortable using the proposed route, away from the immediate residential area, as they were not intruding on the privacy of the owner. Comments were made that this opened up new access and links for those who had not wished to use the route for this reason in the past. I am satisfied that public enjoyment will be improved by the change.

The effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, account being taken of the provisions as to compensation

15. The land crossed by the existing route would remain part of the property to which it belongs, Dye House Farm, with the land crossed by the proposed route being part of the same property. It does not seem that the change would have a negative effect on any land served by the existing or proposed routes.

Whether the point of termination of the new footpath will be on the same highway or highway connected with it, and will be substantially as convenient to the public

16. Point B remains unaltered whilst the eastern termination point, A, moves approximately 30 metres south-south-west along a minor lane to point C. I am satisfied that the termination points will be substantially as convenient to the public in terms of continuation of journeys to and from other highways.

Conclusions

17. I conclude that it is expedient to confirm the Order in the interests of the landowner. In terms of the effect on the public I am satisfied that the changes are not such as to have a negative effect upon users of FP12 and will be an improvement for many.
18. Having regard to these, and all other matters raised at the hearing and in the written representations, I conclude that the Order should be confirmed.

Other matters

19. The objector was very concerned that the proposed bridge may lead to more expense to the public purse than the existing such that it may not be replaced if it fell away, leaving the route unusable, whilst supporters suggested that the proposed route could be used without a bridge. As discussed at the hearing, the bridge is part of the highway, as set out in section 328 of the 1980 Act, and

therefore part of the statutory duty of the highway authority. Should any authority fail to carry out that statutory duty of maintenance then there are legal remedies. As a result, I have not given weight to these concerns, which should be directed to the OMA in their role as highway authority.

20. Concerns regarding the maintenance of other rights of way in the area, or more widely in the county, are not relevant to this Order.
21. Although suggested by some of the supporters that the Order should be confirmed so that the route stayed open, I give no weight to this matter, as there are legal remedies to ensure that public rights of way are open for users.
22. I cannot take account of concerns regarding the way in which the current ROWIP was adopted.
23. I have not taken account of the concerns regarding cost to the public purse in requiring a hearing on this matter. No costs application was made in association with this hearing.

Formal Decision

24. The Order is confirmed.

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Ms J Green Rights of Way Officer, Wiltshire Council

Ms S Madgwick Rights of Way Officer, Wiltshire Council

Mr P Millard Senior Rights of Way Warden, Central Wiltshire, Wiltshire Council

In Support:

Mr P Smith Applicant

Mr P Jefferson *on behalf of* Chapmanslade Parish Council

Mr P Eyles

Mrs M Bradshaw

Mrs M Pickup

Interested parties:

Ms G Parkinson

In Objection:

Mr F Morland

HEARING DOCUMENTS

- 1 The Order
- 2 E-mail of 5 October 2015 in response to FOI request
- 3 Wiltshire Countryside Access Improvement Plan 2015 - 2025

