The Planning Inspectorate

Order Decision

Site visit made on 25 November 2015

by Alison Lea MA (Cantab) Solicitor

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

Decision date: 18 December 2015

Order Ref: FPS/N4720/6/5

- This Order is made under Section 26 of the Highways Act 1980 (the 1980 Act) and is known as the Leeds City Council (Skelton Lake) Public Path Creation Order 2013.
- The Order is dated 1 October 2013 and proposes to create public rights of way as shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Leeds City 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 modifications set out below in the Formal Decision

Preliminary Matters

1. An agreement dated 21 January 1988 and made under Section 52 of the Town and Country Planning Act 1971 required the creation and dedication of public rights of way as part of the restoration of an open cast coal mining site. I am informed that the footpath and bridleways the subject of this Order were laid out on the site in the 1990s in order to comply with that agreement but that they were not formally dedicated.

2. The bridleways provide circular routes and link to the wider public rights of way network. The footpath, in conjunction with part of one of the bridleways, forms a shorter circular route. Both of the objections relate to the footpath which would be created between Points A and E on the Order plan. There are no objections to the bridleways.

3. An Extinguishment Order was also made on 1 October 2013. It would extinguish part of Bridleway No 136 which became a dead end when Pontefract Lane was moved due to the open cast coal mining. There were no objections to the Extinguishment Order and the Council state that they will confirm it if the Creation Order is confirmed.

The Main Issues

4. The requirements of Section 26 of the 1980 Act are that before confirming the Order I must be satisfied that there is a need for the rights of way and that it is expedient to confirm the Order having regard to

   (a) the extent to which the ways 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 of the ways would have on the rights of persons interested in the land, account being taken of provisions as to compensation.

I must also have regard to any material provisions of the Rights of Way Improvement Plan (ROWIP) prepared by the Council. Furthermore, section 29 of the 1980 Act provides that in making a public path creation order it shall be the duty of councils to have due regard to "the desirability of conserving flora, fauna and geological and physiographical features".

Reasons

Whether there is a need for the routes

5. The Council's ROWIP 2009 to 2017 gives high priority to the creation of a series of new paths within the former opencast coal site at Skelton Lake, and to the creation of a new footbridge across the River Aire and Canal, which routes, it states, will link to other key recreational routes. The Council submits that the routes which have been provided are important recreational and commuter routes and have been used by the public since they were provided in the mid-1990s.

6. It is not disputed that the bridleways are well used. The Council suggests that the footpath is used by those wanting or needing a shorter route and by pedestrians who wish to avoid horse riders and cyclists. However, the objectors state that the footpath is rarely used and that it is an unnecessary addition to the rights of way network as the bridleways are nearby. Mr Morris, who states that he has been bird watching in the area of the proposed footpath for over 30 years and visits the area on approximately 100 days each year, says that he has never seen anyone using the footpath "other than poachers on a couple of occasions". The Swillington Ings Bird Group state that members of the group visit the area regularly both during the week and at weekends and have never seen anyone using the route.

7. There is some debate about the extent to which the footpath has been available to members of the public. I am informed that stiles were installed at either end of the footpath when the site was restored and that these were replaced in the last few years by the current kissing gates; a wooden one at Point A and a metal one at Point E. It is suggested that the kissing gates have been tied shut to prevent access, and I note references to the metal gate having been secured by wire for at least 6 months and to twine preventing use of the wooden gate. However, at the time of my site visit, although the wooden kissing gate was held closed by twine, it could easily be opened by lifting the twine loop over the gate post. This appears to reflect the position as shown on the photographs produced to me by both the Council and the objectors.

8. The Council has produced copies of aerial photographs taken in 1999, 2002, 2006 and 2009 which they state demonstrate use of the footpath. I accept that some wear is apparent particularly on the 2009 photograph but agree with the objectors that it could be due to the presence of horses. In addition the Council state that at the time of a recent site visit there was evidence of use of the footpath other than by horses as the grass was shorter through the kissing gates and there was evidence of boot and paw prints on the path. Photographs

have been produced to show this and provide evidence of some use having taken place at that time.

9. Nevertheless the evidence before me does not demonstrate that there has been any more than occasional use of the footpath to date. Although this could be due to access having been prevented at times and due to the route not being on the definitive map, I note that the signage at Point A gives the impression that the route is a public right of way.

10. The objectors suggest that use in the future will be low as the footpath would have low amenity value. They state that due to the presence of grazing horses[1] the route is churned up in winter, making it boggy in the winter and uneven in the summer. At the time of my site visit the ground was muddy and wet in places, but I did not find it difficult to walk the route. I also note that the Council states that if the route was recorded on the Definitive map and Statement it would be added to the Council's maintenance inspection schedule. This would mean that if it deteriorated to an unacceptable level, surface or drainage works would be considered to bring it back to a suitable condition.

11. The footpath provides a significantly shorter circuit than is possible on the bridleways. I do not accept the objectors' suggestion that, due to parking difficulties, the route would necessarily have to form part of a longer walk. Furthermore, being, in part, close to Colton Beck, the footpath provides access to an area which is not otherwise available to walkers. Although it would be necessary to use part of one of the bridleways in conjunction with the footpath to make a circular walk, I also accept that it provides an opportunity to walk without the chance of meeting horse riders or cyclists and that that may be valued by some walkers.

12. I therefore do not accept that the footpath would be of low amenity value. I note that the objectors have suggested an alternative route. However, it would result in a longer circular route, would include a hill and would pass through agricultural land. On balance I agree with the Council that it may be less attractive to some users than the proposed footpath.

13. The fact that the footpath may have some amenity value does not demonstrate that there is a need for it. The Council' suggestion that housing and office use proposed in the Aire Valley Area Action Plan 2007 would create a need for short recreational routes in the area also fails to demonstrate that there is a need for this path. The ROWIP does not refer specifically to the provision of this footpath and the aim of providing routes within the site and linkage to the wider network is met by the bridleways.

14. On the evidence available to me, I am satisfied that there is a need for the bridleways, but consider that it has not been satisfactorily demonstrated that there is a need for the proposed footpath. Accordingly this part of the Order fails to meet this requirement of Section 26 of the 1980 Act. However, for completeness I will address the other requirements of Section 26.

[1] The objectors state that the horses are being grazed illegally.

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

15. Although little information has been provided it is not disputed that the bridleways are well used and I have no reason to doubt that they add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area. For the reasons I have already given, I do not agree that the proposed footpath would be of low amenity and I accept that there may be some use of it in preference to the bridleways. However, I have found that there is no evidence of more than occasional use even though the footpath was provided in the 1990s and appears to have been available for at least a considerable part of the time since then. No evidence has been provided regarding the extent of likely future use of the footpath.

16. I therefore have no information regarding whether there is likely to be use by a substantial section of the public or by persons resident in the area, or the extent to which the footpath would add to convenience or enjoyment.

The effect which the creation of the routes would have on the rights of persons interested in the land

17. The landowners have not objected to the Order and, I am informed, have been working with the Council to provide additional links to the rights of way network. There are therefore no negative effects on persons with an interest in the land.

Other matters

18. The objections to the footpath relate mainly to the potential impact on wildlife and in particular on wintering and breeding birds. Evidence has been provided that the wet pastureland and maturing hedgerows in the vicinity of Colton Beck attracts many Red List birds and I note the variety and number of birds which have been recorded in the area. I accept that walkers, particularly if accompanied by dogs, can cause some disturbance to birds.

19. The Council has a duty to have due regard to the desirability of preserving fauna. It states that the habitat exists on both sides of Colton Beck and that the hedge on the south side, away from the proposed footpath, is more established than that on the north side, and may therefore be more attractive to birds. Nevertheless, it seems to me that, if the footpath was used by walkers with dogs, some disturbance would be caused. On the evidence available to me I am however unable to assess what the consequences of such disturbance might be.

Whether it is expedient to confirm the Order

20. No evidence has been provided which would lead me to consider that it would not be expedient to confirm the Order in respect of the bridleways. However, there is a lack of information regarding the likely use of the path either by the public or by persons resident in the area. For this reason and taking into account the presence of Red List birds in the vicinity of Colton Beck which would be likely to suffer some disturbance if use of the path was significant, I conclude that it would not be expedient to confirm the Order in respect of the footpath.

Conclusions

21. Having regard to these and to all other matters raised I conclude that the Order should be confirmed subject to modifications.

Formal Decision

22. I confirm the Order subject to the following modifications.

- In the paragraph numbered 1 delete the words "and a Footpath" after the words "two bridleways"
- In part 1 of the Schedule to the Order delete the paragraph headed "Leeds Public Footpath No. 261"
- In part 2 of the Schedule to the Order delete the heading "Leeds Public Footpath No. 261" and the limitations specified under that heading
- On the Plan to the order delete the route between Points A and E and delete references to a proposed footpath from the key

Alison Lea

Inspector