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## Order Decision

Site visit made on 27 January 2016

**by Mrs H D Slade MA FIPROW**

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

**Decision date: 5 February 2016**

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### **Order Ref: FPS/B3600/4/81**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Surrey County Council Footpath No. 4 (Woking) Public Path Diversion Order and Definitive Map and Statement Modification Order 2014.
- The Order is dated 19 November 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule, and to modify the Definitive Map and Statement accordingly.
- There were three objections outstanding when Surrey County 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 the modification set out below in the Formal Decision.**

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### **Procedural Matters**

1. I carried out my site visit during the morning of 27 January 2016 when the weather, and the ground conditions, were both very wet. In the light of some of the objections to the Order, I found this to have been helpful.

### **The Main Issues**

2. Section 119(1) of the 1980 Act states that an order can be made where it is considered by the authority that it is expedient in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, that the line of the path in question should be diverted. This Order has been made in the interests of both the landowner and of the public. Section 119(6) of the same Act states that, if I am to confirm the Diversion Order, I too must be satisfied in this respect. Furthermore, before the Order can be confirmed I must be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion.
3. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order, having regard to the following issues:
  - a) the effect that the diversion would have on public enjoyment of the path as a whole;
  - b) the effect of the coming into operation of the Order on land served by the existing right of way; and
  - c) the effect of the new public right of way on the land over which it is created (or land held with it);

having regard also, with respect to b) and c), to the provisions for compensation as set out in Section 28 of the 1980 Act.

4. I must have regard to the material provisions, if any, of the Rights of Way Improvement Plan ('ROWIP') produced by the Council and I must also take into account government advice, relevant legal precedents and other legislation which is applicable.

## **Reasons**

### ***Whether it is expedient in the interests of the landowners and the public that the way is diverted***

5. The Diversion Order has been made by Surrey County Council ('the Council') on the basis that it is expedient in both the interests of the landowner and of the public. One of the objectors, Mr Heggie, is of the view that this is wrong as the diversion has been proposed to overcome unlawful obstructions to the definitive line of the path which the Council has been unwilling to resolve. He considers that there is no benefit to the public and that the preamble is therefore incorrect.
6. It was clear to me at my site visit that the definitive line of the path is obstructed by locked gates and fencing in the fields to the north and south of the crossing of the Bourne at Point B on the Order plan. In order to examine the definitive line I was forced to climb over two locked gates. Given that some of the issues I need to address relate to conditions underfoot I felt it was imperative that I had actually walked both the existing and proposed routes as far as possible. The Council indicates in its statement of case that the proposed route has been the route of choice for some time, and this is acknowledged by the objectors.
7. The Council states that there is no direct benefit to Mr and Mrs Gabriel or the Horsell Common Preservation Society ('HCPS') as landowners but it would mean that the definitive route between Points A and B1 would not need to be cleared. These landowners are content with the continued use of the track and the bridge over the Bourne which would become the definitive line of the path.
8. Mrs White, who owns the remaining land affected by the proposal, wishes to continue to keep stock on the land crossed by the existing route and would prefer that pedestrians, and particularly dogs, are excluded from the parcel of land crossed by the current definitive line between Points B2 and D.
9. From the landowners' perspective, it would clearly be in the interests of both Mrs White and the HCPS that the path be diverted as it would avoid the need to re-instate the existing line of the path. There is only a very marginal effect on the land owned by Mr and Mrs Gabriel (Points A to A1), but I am nevertheless satisfied that, in general, it is expedient in the interests of the landowners that the path be diverted.
10. With respect to the interests of the public, the Council considers that the track provides a better surface than the existing route through the fields; that it is drier underfoot and also free from limitations. The diversion would also avoid the need to build or replace a footbridge over the Bourne.
11. The revised statement which forms part of the Order (Part 4) indicates that on the route to be extinguished there was one stile. As no grid reference is given

- it is not easy to identify the precise location but I assume it must have been in the vicinity of Points A or B where the footpath passes into the field owned by the HCPS. The proposed route would run along the track and there would be no gates or stiles to negotiate. I accept that this would be a marginal benefit to the public.
12. With respect to the surface, I agree with the objectors that any improvement is less obvious. Whilst I accept that the track has a cinder surface, as opposed to most of the existing route which runs across vegetation in the respective fields, the track is uneven and, on the day of my site visit, was covered in several large and deep puddles. It was impossible to avoid walking through some of these since they covered the entire width of the route. The existing route was surprisingly much drier between Points A1 and B; but it was quite wet in one place between Points B2 and D, and on the day of my site visit it was not possible to avoid it.
  13. It is likely to be easier to overcome the puddling problems on the proposed route, using surfacing or grading techniques, than it would be to improve the drainage on the existing route, but I consider that the alleged advantages to the public of the track surface as claimed by the Council are not significant. Whilst the existing route might be naturally wet, the proposed route clearly takes a significant amount of vehicular traffic and is likely to need regular maintenance to avoid the development of puddles such as exist at present.
  14. Furthermore, and in connection with the use of vehicles, the proposed diversion would place pedestrians onto a route shared with vehicles. Some of the vehicles may be quite large since the track provides access to stables. The HCPS acknowledges that it uses the route for vehicular access and a number of vehicle tracks were in evidence when I made my visit. I note that the public has to share part of the existing and unaltered route with vehicles in any case (from the road junction to Point A) but the separation of vulnerable users (i.e. pedestrians) from vehicles is normally considered to be good practice. Substituting a pedestrian-only field route with a section of shared-use track, whilst not necessarily being an overwhelming disadvantage, is unlikely to be classed as expedient in the interests of the public.
  15. In relation to the bridge over the Bourne, the original statement for the path shows this bridge to have been 9.0 feet wide; the width of the bridge on the proposed path is given as 3.6 metres. This suggests to me that the current bridge was a replacement for the previous bridge and is likely to be either on the same alignment or so close to it as to make little difference. This is borne out by the Order plan. I am not persuaded by the Council's arguments that there would be a need to build a new footbridge on the definitive line if the Order was not confirmed, and thus it is difficult to argue successfully that the diversion will avoid the cost to the public purse.
  16. Consequently I agree with Mr Heggie in that I struggle to conclude that it is expedient in the interests of the public that the path should be diverted. It is open to me to modify the Order to better reflect the purpose of making it, and if I confirm the Order I intend to remove the reference in the preamble which refers to it being in the interest of the public.

***Whether the path would be substantially inconvenient to the public as a consequence of the diversion***

17. The proposed diversion would result in the public having to walk an extra distance of 22 metres, which is insignificant in terms of a longer walk, of which this section of public right of way would form only a small part.
18. As I have already mentioned, the proposal would place the public on a shared-use route with vehicles. The objectors point out that the usable width of the proposed path – specified in the Order as being 4 metres – is actually less than the quoted width for much of its route due to the existence of overgrown verges on either side. In addition there is barbed wire on the track-facing side of the fencing running along the side of the path. The Council considers that at twice the width normally specified for new footpaths the width is more than adequate.
19. I noted on my site visit that the usable width of the track (i.e. the cinder surface) was about 3 metres, and that the verge on either side was of variable width and suitability for use by pedestrians. I did not meet a vehicle using the track during my visit, but the visible tracks suggest that most, if not all, of the cinder track surface would be occupied by a vehicle, requiring pedestrian to stand to one side. This could be inconvenient depending on where on the route the vehicle and pedestrian met, and whether or not the pedestrian was accompanied (by a child, pushchair or dog for example). The existence of the barbed wire on the fence may exacerbate any inconvenience.
20. On the section of the existing route which would be extinguished by the diversion vehicles would only be encountered, if at all, when crossing the line of the track in the vicinity of Point B when utilising the existing bridge. It seems to me therefore that it is inevitable that the proposed route would be likely to increase the likelihood of conflict between pedestrians and vehicles which could be inconvenient.
21. I have already referred to the issue of pooled water on the track surface. Both the existing and proposed routes suffer from drainage problems to a greater or lesser degree. Whilst I have concluded, in this regard, that the diversion could not be described as being in the interests of the public, the issue of whether or not it could be considered to be substantially less convenient is more doubtful. Remedial work could be undertaken to improve the drainage problems on the track, and in dry conditions the surface is likely to be easier to walk in general than the existing line which is more uneven, and part of which is likely to be wetter for more of the time, as indicated by the nature of the vegetation.
22. The question is, whether or not the disadvantages claimed by the objectors amount to the proposed route being 'substantially less convenient' than the existing route. This assessment must be made only by comparison of the length of route to be extinguished against the length to be provided. My view is that, whilst I accept that there could be some inconvenience caused to some people on some occasions, for the majority of the time these difficulties will be minor or insignificant. Some of the potential problems could be mitigated by taking remedial action (for example: better surfacing or drainage of the proposed route; removal of the unnecessary barbed wire on the track side of the fence) and therefore I conclude that the path will not be substantially less convenient to the public as a consequence of the diversion.

***The effect of the diversion on the enjoyment by the public of the route as a whole***

23. The existing route has been obstructed by fencing and gates. The Council has stated that the landowner is entitled to fence their fields; but they are not, of course, entitled to obstruct the path in the process. However, if the fields are to be used for stock purposes I accept that the Council is empowered to authorise the necessary gates etc. If the diversion does not go ahead, the Council clearly envisages that such authorisation could and would be given. Thus the complaints by the objectors that the ambience of the path has been altered are of little relevance since that situation will be likely to continue: the former openness of the route has already been removed to some degree. I accept that the proposed diversion would emphasise that by placing the public right of way on an enclosed track, and that this may reduce the pleasure of using the route for some people. However for others the ability to utilise a surfaced track with no physical limitations may be a benefit.
24. The onward route across the common is open and allows roaming access and does provide a balance of sorts, but I accept that for people like Mr Hayter and Mr Heggie, who clearly have long memories of the route, the changes that have taken place, and those that are proposed, are likely to reduce their personal enjoyment of the route. The public as a whole may not be so sensitive to these changes, if indeed they are aware of them, and thus I conclude that, in general, the diversion would not be overly detrimental to the public's enjoyment of the route as a whole.

***The effect on land served by the existing right of way, or the land over which the proposed route would be created***

25. No adverse issues have been raised in this regard, the landowners concerned being supportive of the Order. The diversion would allow the continued fencing of the land over which the existing right of way runs, thereby facilitating its use for stock management.

***Material provisions of the ROWIP***

26. The Council considers that the proposal is in line with policies contained in its ROWIP, in particular issues such as improving access for the public in terms of accessibility and resolving anomalies where the routes on the ground do not correspond with the legal record.
27. I do not consider this situation to be one of an anomaly as such, since the line of the legal route is not in use because it is obstructed and not because of any error or anomaly. However, it is clear that the proposed route has been used for some time (Mr Heggie considers it may already be a right of way) and the Order is certainly not in conflict with any of the ROWIP policies. The removal of limitations over the affected length of the right of way would clearly accord with policies to improve accessibility.

***Other Matters***

28. Mr Heggie goes into some detail about issues which relate to sections of the route which lie beyond the extent of the proposed diversion. In particular he questions the accuracy of the Order map in relation to the route immediately to the south of Point D, by reference to a pre-existing footbridge and the

discrepancy between the line shown on the Order map and the line on the Definitive Map.

29. I was able to see the footbridge in question, now lying abandoned within an inaccessible area, and fully understand Mr Heggie's points. However the discrepancy, even if he is correct, does not affect the validity of the Order as it is outside the scope of the length of the right of way affected by the Order. I have not allowed his concerns in this regard to affect my examination of the proposal.

### **Conclusions**

30. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to a modification.

### **Formal Decision**

31. I confirm the Order subject to the following modification:

- In the last line of the first paragraph of the preamble to the Order, delete the words '*and the public*'.

*Helen Slade*

**Inspector**