



Order Decision

Site visit on 22 December 2015

by Mark Yates BA(Hons) MIPROW

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

Decision date: 2 February 2016

Order Ref: FPS/W1850/4/15

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Herefordshire Council Footpath BQ4 (Part) Bolstone Public Path Diversion Order 2013.
- The Order was made by the County of Herefordshire District Council ("the Council") on 18 December 2013 and proposes to divert a section of Footpath BQ4, in the parish of Bolstone, as detailed in the Order Map and Schedule.
- There were two objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. Although the footpath is obstructed in places, I do not consider that this issue has any material bearing on my decision. This is a matter that an aggrieved party should rightly pursue with the Council. Nonetheless, when considering the convenience of the routes included in the Order, it is equitable to disregard the obstructions on the existing path.
2. Reference has been made to an application, in accordance with the Wildlife and Countryside Act 1981, to delete the footpath from the definitive map, which was turned down by the Council. However, the Order before me proposes to divert the footpath under different legislation. Further, no evidence has been provided to show that public rights already exist over the proposed path in the Order. Nor is there any suggestion that the proposed path is the subject of an application to add this route to the definitive map.
3. The objectors have suggested an alternative diversion proposal; however, I have to consider the merits of the Order before me. There is also a lack of support for the alternative proposal from the Council and the applicants for the Order (Mr and Mrs Dobson).

Main Issues

4. Section 119 of the 1980 Act requires in this case that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient, in the interests of the owner and occupier of the land crossed by the footpath¹, that the path should be diverted;

¹ Paragraph 5.32 of Department for Environment, Food and Rural Affairs Circular 1/09 advises that an Inspector is entitled to confirm an Order where the reasons for doing so differ from those of the Authority who made the Order, provided that the Inspector is satisfied that in the interests of the owner, lessee or occupier or the public, it is in the expedient to divert the way.

- (b) any new termination point is substantially as convenient to the public²;
 - (c) the new path to be provided will not be substantially less convenient to the public;
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the path as a whole, and
 - (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing path and the land over which the new path would be created together with any land held with it.
5. I must also have regard to any material provision contained in a Rights of Way Improvement Plan ("ROWIP") for the area covered by the Order.

Reasons

Whether it is expedient, in the interests of the owner and occupier of the land crossed by the footpath, that the path should be diverted

- 6. I have looked at the six reasons given by the applicants in support of the diversion but I do not find that these generally amount to support for the Order being in their interests. In respect of the statement that the proposed path will "*be more easily maintained by the landowners*", no evidence is provided in support.
- 7. I am not satisfied from my observations of the site that the footpath can be said to pass close enough to the applicants' house to have a significant effect on their privacy or security. Nor has any evidence been provided by the applicants on this issue. The applicants would nonetheless benefit from the diversion given the use of their land for livestock purposes.
- 8. The majority of the existing path proceeds across a field in the ownership of the Holme Lacey Estate Limited and tenanted to Mr Cleland. In my view, the diversion of the path from an alignment which continues diagonally across this arable field to the established track to the east would clearly benefit the landowner and the tenant by assisting with the agricultural use of the field.
- 9. As can be seen from the above, I accept that there would be some degree of benefit for the applicants. However, I consider that there would be greater benefits arising out of the diversion for the owner and occupier of the field to the north. I therefore find that it is expedient, in the interests of these parties, to divert the footpath. This means that, if confirmed, the preamble in the Order should be modified accordingly.

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

- 10. The objectors (Mr Morgan³ and Mr Wride⁴) have concerns about the safety of the proposed path due to the use by private and agricultural vehicles. However, the information supplied by the Council and the applicants does not point to widespread vehicular use of the track over which the proposed path proceeds. This is supported by a letter from Mr Norton of Gannah Farm, which

² It should be on the same highway or a highway connected to it

³ Local correspondent for the Open Spaces Society

⁴ On behalf of the Hereford Group of the Herefordshire Ramblers'

is the property served by the track. Nor is there any evidence to suggest that there will be a significant increase in the amount of vehicular traffic using the track in the future. Footpath BQ4 also continues over this track to the north. Overall, I find there to be little merit in the safety concerns of the objectors regarding this issue. It follows that the same is applicable to Mr Morgan's point about vehicular noise and pollution.

11. The Council refers to the likelihood that particular structures, such as a stile or gate, will be required at certain points in relation to the existing path. In this respect, the proposed path provides a route free of structures. It also has a specified width of 2 metres and is located within a wide and well-defined track. Both paths require a person to traverse a fairly demanding gradient.
12. When I visited the site, standing water was evident on both routes following a prolonged spell of rainfall. However, the existing path was far worse and it was very difficult to walk across the large field. On this issue, I found the firm surface of the proposed path to be superior to the existing path. The existing path has a greater length but this issue has to be considered in conjunction with the proposed change to the southern termination point, which I address below.
13. Having regard to the information supplied and my observations of the site, I do not find that the diversion would lead to the footpath being substantially less convenient for the public. In my view, there are potential benefits arising out of the diversion of the footpath onto the track.

Whether the new termination point is substantially as convenient

14. The diversion would lead to the southern termination point being located approximately 292 metres further to the east of the present point it joins the C1266 Road. From the measurements provided by the Council, it is apparent that the proposed termination point is located further from an apex of a bend in the road than the existing termination point. Reference is also made by the Council to the proposed path terminating on the splay of the access track leading to Gannah Farm, which should assist walkers exiting at this point.
15. There is the potential need to have to walk further along the C1266 Road but this depends upon the direction of travel. For people travelling to or from the east there would be less road walking involved by virtue of the diversion. The consultation response on behalf of Bolstone Parish Council is supportive of there being no particular disadvantages for the public arising out of this issue. I noted from my visit that this section of road is straight with a verge present in places. It also appeared to be very lightly trafficked.
16. Overall, I consider that the proposed termination point is substantially as convenient as the one that presently exists.

The effect that the diversion would have on public enjoyment

17. The objectors refer to the sense of openness in connection with the existing path which they value. Reference is also made to the hedges obscuring wildlife from the proposed path and the loss of character from walking on a hard stoned track. In contrast, the Council points to the nature of the path where it passes through the paddocks. It is further stated that the hedges are interesting in their own right.

18. The track is bounded by hedges on its eastern side and for a proportion of its western side. I accept that the existing path has a more open nature but the track is not narrow. In particular, there are long-ranging views of the surrounding landscape from both paths. I have not been provided with sufficient information to determine that wildlife will be obscured by virtue of the diversion. In respect of the nature of the two routes, the convenience of the proposed path may add to the enjoyment of the public.

19. Whilst I acknowledge that some people may find the character of the proposed path to be less enjoyable, this is very much a subjective issue. Having regard to the above, I am not satisfied that the diversion would have a significant impact on the public's enjoyment of the path as a whole.

The effect of the diversion on other land served by the existing path and the land over which the new path would be created

20. No issues are apparent in relation to any land served by the existing path or the land over which the new path would be created.

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

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

Conclusions

22. Although the case in support is not substantive, I have concluded that it is expedient, in the interests of the owners and occupiers of the land crossed by the footpath, to divert the path. Further, I found the proposed path to not be substantially less convenient than the existing path and the proposed new termination point to be substantially as convenient as the one that presently exists. I do not consider the other issues raised by the objectors to be of such substance to demonstrate that it is not expedient to confirm the Order. Therefore, I conclude that it is expedient to confirm the Order.

Overall Conclusion

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

Formal Decision

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

- Delete "owner and occupier" from the third line in the preamble of the Order and insert "owners and occupiers".

Mark Yates

Inspector