



## Order Decision

Site visit on 20 January 2016

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 17 February 2016**

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### **Order Ref: FPS/X1355/5/8**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The County Council of Durham (Unregistered Footpaths at Willowtree Avenue, Belmont Parish) Public Path Stopping Up Order 2015.
- The Order was made by the County Council of Durham ("the Council") on 5 February 2015 and proposes to stop up two footpaths, as detailed in the Order Map and Schedule.
- There was one objection 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 modifications set out below in the Formal Decision.**

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### **Procedural Matters**

1. I undertook a visit to the site on 20 January 2016. The site manager was in attendance during part of my visit for the purpose of providing safe access through the site. I also explained the reason for my visit to another gentleman who approached me during my visit. In both cases, I did not enter into any discussion regarding the merits of the Order.
2. The paths proposed to be stopped up are not currently recorded as public rights of way. However, the Council says that evidence of use of these routes has been provided by members of the public and the applicant (Gladedale (Sunderland) Limited) accepts that they are likely to have acquired public rights. Whilst I note that the objector (Mr Pears) refers to use by cyclists, the Council states that all of the evidence provided relates to use by pedestrians. In the circumstances, I shall consider the Order in the context of use by pedestrians. Clearly, if confirmed, the Order would not stop up any unrecorded higher public rights.
3. Mr Pears has provided extracts of guidance from a range of sources. In respect of the guidance published by Leicestershire County Council, I am not convinced that it is material to cases involving public rights of way elsewhere. In reaching my decision, I have considered all of the extant guidance which may be applicable to this case.
4. All of the points referred to below correspond to those shown on the Order Map.

## **Main Issues**

### ***The statutory test***

5. If I am to confirm the Order, I must be satisfied that it is necessary to stop up the footpaths to enable development to be carried out in accordance with the planning permission<sup>1</sup> granted for the site.

### ***Other material considerations***

6. The merits of the planning permission granted for the development is not an issue before me. However, the impact of a stopping up on particular parties is a material consideration. This is reflected in paragraph 7.15 of Department for Environment, Food and Rural Affairs Circular 1/09<sup>2</sup> ("Circular 1/09"), which advises in respect of Orders made under Section 257 of the 1990 Act:

*"That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order".*

## **Reasons**

### ***The Order***

7. The text of the Order is clear regarding its intention to stop up the two footpaths. However, I note that there is an error in paragraph 3, where reference is made to the diversion of the footpaths, which would need to be modified if the Order is confirmed. From the background papers provided it is also apparent that alternative routes will be provided through the development.
8. Mr Pears points to the published notice stating that the paths to be stopped up are *"to be replaced by new adopted footways, as shown on the order plan"*. The Order Map broadly shows the routes of the *"Adopted footways to be created"*. In terms of the Order, I accept that its purpose is to stop up the footpaths and it makes no provision for the creation of alternative highways. Nonetheless, the statement in the notice and the footways depicted on the Order Map are clearly included for information in the context of the overall scheme. Taking all of the matters together, I am not satisfied the Order is fatally flawed or that the public would have been prejudiced in understanding the intended changes to the highway network.
9. Mr Pears has provided maps and aerial photographs in support of his view that one of the paths to be stopped up is incorrectly shown on the Order Map. In response, the Council says the paths shown are an accurate representation of the routes claimed on the basis of the user evidence, aerial photographs and on-site evidence. Whilst I have not been provided with the actual evidence relied upon, it is my view that I should consider the Order in the context of the routes the Council believes carry public rights. However, clearly my decision will not impact on any other route over which public rights are found to subsist.

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<sup>1</sup> References to the planning permission should be taken to relate to the detailed permission granted for the site rather than the outline permission.

<sup>2</sup> This Circular has superseded Department of Environment Circular 2/93

In respect of the planning process, as outlined in paragraph 11 below, this is not a matter before me.

***Whether it is necessary to stop up the footpaths to enable development to be carried out***

10. Outline planning permission was granted on 22 May 2014 and detailed planning permission was granted on 15 July 2015 for a residential development comprising of 38 dwellings. There are two distinct footpaths the Council believes exist through the site, namely between points A-B-C ("the western path") and points D-E ("the eastern path").
11. It is not my role to review the validity of the planning permission granted for the site or to address issues that should have been considered in relation to the planning application. Therefore, I have not addressed particular points made by Mr Pears. I need to start from the position that the permission granted is in planning terms in the public interest. The issue to be determined is whether it is necessary to stop up the footpaths to enable development to be carried out in accordance with the planning permission granted for the site. In addition, the decisions of other Inspectors in relation to previous planning appeals involving this site have no bearing on my decision.
12. Mr Pears has drawn attention to paragraph 7.11 of Circular 1/09 which states: *"The grant of planning permission does not entitle developers to obstruct a public right of way. It cannot be assumed that because planning permission has been granted that an order under section 247 or 257 of the 1990 Act, for the diversion or extinguishment of the right of way, will invariably be made or confirmed. Development, in so far as it affects a right of way, should not be started and the right of way should be kept open for public use, unless or until the necessary order has come into effect..."*.
13. I concur with Mr Pears that the commencement of works which impact on a right of way is contrary to the guidance set out above. Nonetheless, the fact that works have commenced must not influence my decision. Clearly there is a risk that the Order will not be confirmed. It is apparent from my observations of the site that the relevant works are not substantially complete. At the present time, the paths are stated to be the subject of a temporary closure.
14. The composite plan provided by the Council shows that the western path would pass through two properties (plots 13 and 16) and over the driveway serving particular properties. It is therefore necessary to stop up the footpath to enable development to be carried out in accordance with the planning permission granted for the site.
15. It appears that no houses will be built over the eastern path but it does proceed very close to the corner of the property proposed to be sited on plot 10. From looking at the plans provided, it is apparent that the footpath would proceed in front of plots 1-10 and cross the driveways of the properties concerned. In light of this issue, I consider that it is also necessary to stop up the eastern path to enable development to be carried out.

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***The extent to which the stopping up of the footpaths would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpaths affected by the Order***

16. As outlined in paragraph 8 above, the Order does not make provision for any alternative route. However, it is clearly intended that the public will be able to use two routes which coincide with the footways adjoining the road leading into the development and two connecting paths. The intention is that the footways and paths will be adopted by the Council. It is also the case that an existing public footpath<sup>3</sup> provides an alternative route to the western path.
17. There is nothing to suggest that the footways and paths will not be adopted by the Council. However, I cannot be certain that this will happen. On this basis, I consider that, if confirmed, it is prudent to modify the Order to specify that the stopping up of the footpaths shall have effect on the adoption of the routes through the development.
18. The matter to be determined is the impact that the stopping up of the footpaths would have on particular parties. I distinguish this from the impact of the development on local residents, including Mr Pears. The road, footways and paths to be created through the site are part of the approved development. I need to consider the potential loss of the footpaths included in the Order in relation to the alternative routes that will exist. Therefore, particular issues such as the alleged loss of wildlife, burden on the public purse and strain on the drainage system are not matters material to my decision.
19. Paragraph 7.8 of Circular 1/09 advises wherever possible against the use of alternative routes which follow estate roads. However, in this case, no other alternative appears to be available within the constraints of the development for which planning permission has been granted. As outlined above, an additional alternative route is available via Footpath No. 5.
20. It is apparent that the footpaths across the site had a natural surface. Mr Pears accepts that the provision of a tarmac surface in connection with the routes through the development would be more convenient during spells of inclement weather but he points to particular disadvantages in relation to the alternative routes. In respect of the extracts provided by Mr Pears from Circular 1/09 regarding structures, there is no information before me to indicate that structures, such as gates or stiles, will be erected on the alternative routes. Nor do I find there to be any significant increase in the distance to be travelled in connection with the routes through the development.
21. Mr Pears refers to the gradient in connection with a route provided through the development and the impact upon walkers, wheelchair users and people with a pushchair. This issue appears to relate to a section of the alternative route between plots 17 and 18-19. He also draws attention to guidance on gradients for wheelchair users.
22. The information supplied by Mr Pears from the document '*Inclusive Mobility*' indicates that the maximum gradient for a wheelchair user is 1:12, which is steeper than the 1:14 gradient indicated for the relevant section of the alternative route. In addition, the existing path in the locality of point A proceeds on a natural surface up a fairly steep gradient. In my view, this

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<sup>3</sup> Belmont Footpath No. 5

- section would pose difficulties for people in a wheelchair and possibly others who have limited mobility.
23. The alternative routes would be separate from the vehicular traffic passing through the development and there will be no need to cross the estate road. I accept that on occasions vehicles will cross the footways in relation to the driveways of the properties. However, given the limited nature of the use for access purposes and the number of properties involved, I do not consider there to be significant safety concerns for the public arising out of this issue.
24. Reference is made by Mr Pears to a width of 2 metres for the proposed footways. In my view, 2 metres or thereabouts would be a suitable width to accommodate pedestrian traffic. From the information supplied from *Inclusive Mobility*, it is apparent that a width of 2 metres is sufficient to allow two wheelchair users to pass. In particular, 1.5 metres is required to enable a wheelchair user and walker to pass and is regarded as the minimum acceptable width in most circumstances. The width and design of the alternative routes through the development would also need to meet the Council's requirements for them to be adopted.
25. A section of each link path is shown on the site plan passing between fences and a similar width for these enclosed sections would seem more restrictive. Whilst I note that the Rights of Way Committee Practice Guidance recommends a minimum width of 4 metres in such circumstances, there is no statutory requirement for a particular width and each case needs to be determined on its own merits.
26. Enclosed paths can lead to concerns in relation to the commission of crime or the fear of crime and the Council's own policy is that it does not encourage paths of this nature wherever possible. However, from an examination of the site plan it is apparent that the enclosed sections are relatively short in length and straight. It also appears that a margin will exist between the fence of plot 10 and the path. Therefore, I do not find that the enclosed sections are likely to pose a problem for members of the public using the relevant sections of the alternative routes or serve to deter people from using the routes. It would be for the Council to determine the extent to which the alternative routes should be signed in order to guide the public.
27. Having regard to the above, I do not consider that there would be any significant loss for the public if the footpaths are stopped up, subject to the provision of the alternative routes through the development. Nor is there anything to suggest that the stopping up of the footpaths will have an adverse impact on persons whose properties adjoin or are near to the paths affected by the Order.

### **Conclusions**

28. I have concluded that the stopping up of the footpaths is necessary to enable development to be undertaken in accordance with the planning permission granted for the site. In light of my conclusions regarding the other matters, I am not satisfied that there are any disadvantages to the public generally, or for local residents, arising out of the stopping up of the footpaths that are sufficient to outweigh the benefits of confirming the Order.

### **Overall Conclusion**

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

### **Formal Decision**

30. I confirm the Order subject to the following modifications:

- Delete paragraph 2 in the Order and insert "*The stopping up of the footpaths shall have effect on the date that the highways within the development for which planning permission has been granted (Application Number: DM/15/01689/RM) are adopted by the County Council of Durham.*"
- Delete "*are diverted*" in the first line of paragraph 3 in the Order and insert "*are stopped up*".

*Mark Yates*

**Inspector**