



Order Decisions

Site visit made on 4 February 2016

by Alison Lea MA (Cantab) Solicitor

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

Decisions date: 26 February 2016

Order Ref: FPS/M1005/3/1 – Order 1

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Amber Valley (Footpath No. 50 - Parish of Belper) Public Path Extinguishment Order 2015 – (No.1) (Amended).
- The Order is dated 19 June 2015 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Derbyshire 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

Order Ref: FPS/M1005/3/2 – Order 2

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Amber Valley (Footpath No. 50 - Parish of Belper) Public Path Extinguishment Order 2015 – (No.2) (Amended).
- The Order is dated 19 June 2015 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Derbyshire 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

Order Ref: FPS/M1005/3/3 – Order 3

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Amber Valley (Footpath No. 50 - Parish of Belper) Public Path Extinguishment Order 2015 – (No.3) (Amended).
- The Order is dated 19 June 2015 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Derbyshire 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

Procedural Matters

1. The 3 orders relate to various sections of FP50 which are shown on the Order plans as leading from Forest Close towards and then, in general terms, parallel to, Bobbin Way. Originally one Order was made (the Original Order) but, following objections to it, it was decided to re-make the Order as 3 separate Orders in the hope that objections would be limited to only one of the sections of footpath to be extinguished. Objections were made to all 3 Orders, which

objections included concerns about the way the Orders were advertised and pointed out an error in the Order plans. In order to address these matters, the Council made the Orders the subject of this appeal.

2. There are outstanding objections to all 3 Orders. One of the grounds of objection is that the digitisation of the Definitive Map has created errors so that the line of the footpath is now shown in the wrong place. It is submitted that the route shown on the Order plans as the route to be extinguished is inaccurate and does not represent the route of FP 50 on the definitive map or on the ground.
3. I accept that due to limitations of scale the line on the 1953 definitive map could represent a path many metres wide. I also note all the evidence provided by the objectors' including their own knowledge regarding the position of FP50 on the ground and the references to features such as old stiles. However, although I accept that the route shown on the Order plans may not be entirely accurate, the Orders before me are for the extinguishment of the route shown on the Order plans. It is not for me, in considering whether or not to confirm these Orders, to determine the position of the route on the ground, whether or not the definitive map is correct or whether Derbyshire County Council's digitised map accurately reflects the 1953 definitive map.
4. At my site visit I was unable to walk the routes to be extinguished. Although I note that various landowners have given consent for me to enter their land I did not consider this to be necessary. I am satisfied that I was able to see from the public highway all that it was necessary to see.

The Main Issues

5. The Orders are made under S118 of the 1980 Act. The requirements of this section are that, before confirming them, I must be satisfied that it is expedient to stop up the rights of way having regard to
 - (a) the extent, if any, to which it appears that they would, apart from the Orders, be likely to be used by the public; and
 - (b) the effect which extinguishment would have as respects land served by the paths.

When considering these requirements I must disregard any temporary circumstances preventing or diminishing the use of the rights of way. The 1980 Act also requires me to have regard to any material provisions in the Rights of Way Improvement Plan for the area.

6. The Orders were made because it appeared to Amber Valley Borough Council that the relevant parts of the footpath were "not needed for public use". However, although that was a matter of foremost importance for the Council when it decided to make the Orders, and falls within the broad character of expedience, in considering whether to confirm the Orders it is the likely use of the paths in the future that I am required to consider.

Reasons – Order 1

The extent to which it appears that the route would, apart from the Order, be likely to be used by the public

7. Order 1 would extinguish a section of footpath about 20m long leading through No 5 Forest Close. It has been obstructed since No 5 Forest Close was built in

the 1970s. However, there is a tarmacadam path, also about 20m long, which starts from the end of Forest Close, between Nos 5 and 7, and connects with FP50 (the Alternative Route). The objectors' state that the Alternative Route is well used and needed by the public and that they have themselves used that path for about 45 years. The Alternative Route is part of the adopted highway and is shown on the Council's List of Streets.

8. There is no evidence before me to suggest that the path through No 5 Forest Close would be used by the public even if it were not obstructed by that property. All the evidence is that the Alternative Route, which is a similar length, is well used and indeed this is accepted by the objectors. I therefore conclude that, even if made available, there would be little, if any, use by the public of the route to be extinguished.

The effect which extinguishment would have as respects land served by the path

9. The objectors appear to be concerned that part of FP 50 where it crosses open land between Forest Close and Bobbin Way could become a "dislocated dead-end" or be extinguished. However, the Order does not include that part of FP 50 and would have no effect upon it. Both the route to be extinguished and the Alternative Route connect to FP 50 where it crosses open land towards Bobbin Way. There is therefore no land served by the route which would be detrimentally affected by closure of the route shown on the Order plan.

Other matters

10. The objectors claim that the Alternative Route is already the "correct route" of FP 50 and that extinguishment would, in some way, "downgrade" it. However, the Order, if confirmed, would extinguish the route shown on the Order plan. The Alternative Route, which is part of the adopted highway, would be unaffected.
11. The objectors also suggest that as, in their opinion, due to its width, part of the path shown on the 1953 definitive map may be within the boundaries of No 5 Forest Close, the Order could be modified to extinguish that part of the route. However, the Order plan shows the entire width of the route to be extinguished falling within the boundaries of No 5 Forest Close and no modification is required.
12. My attention has not been drawn to any specific provisions of the Rights of Way Improvement Plan which would have a bearing on this matter.

Conclusions

13. Having regard to these and all other matters raised in the written representations I am satisfied that it is expedient to confirm the Order.

Reasons – Order 2

The extent to which it appears that the route would, apart from the Order, be likely to be used by the public

14. Order 2 would extinguish a section of FP 50 about 36.6m long, which passes through No. 12 Bobbin Way. The route has been obstructed since about 2001 when No 12 Bobbin Way was built. However, there is a tarmacadam path, about 37m long, which runs between No 12 Bobbin Way and Nos 8-12 Bradwell Way which connects with FP 50 (the Second Alternative Route). The objectors

state that the Second Alternative Route has been “habitually used by the public on a daily basis, without any problems, since 2001/3 when Bobbin Way was built” and that they have walked the path regularly for the past 45 years both before and after the 2001/3 development of Bobbin Way. The Second Alternative Route is part of the adopted highway and is shown on the Council’s List of Streets.

15. There is no evidence before me to suggest that the route through No 12 Bobbin Way would be used by the public if it were made available for use. All the evidence is that the Second Alternative Route, which is a similar length, is well used and indeed this is accepted by the objectors. I therefore conclude that, even if made available, there would be little if any, use by the public of the route to be extinguished.

The effect which extinguishment would have as respects land served by the path

16. The objectors appear to be concerned that part of FP 50 where it crosses open land between Bobbin Way and Forest Close could become a “dislocated dead-end” or be extinguished. However, the Order does not include that part of FP 50 and would have no effect upon it. Both the route to be extinguished and the Second Alternative Route connect to FP 50 where it crosses open land towards Forest Close. There is therefore no land served by the route which would be detrimentally affected by closure of the route shown on the Order plan.

Other matters

17. The objectors claim that the Alternative Route is already the “correct route” of FP 50 and that extinguishment would, in some way, “downgrade” it. However, the Order, if confirmed, would extinguish the route shown on the Order plan. The Alternative Route, which is part of the adopted highway, would be unaffected.
18. The objectors also suggest that as, in their opinion, due to its width, part of the path shown on the 1953 definitive map may be within the boundaries of No 12 Bobbin Way, the Order could be modified to extinguish that part of the route. However, the Order plan shows the entire width of the route to be extinguished falling within the boundaries of No 12 Bobbin Way and no modification is required.
19. My attention has not been drawn to any specific provisions of the Rights of Way Improvement Plan which would have a bearing on this matter.

Conclusions

20. Having regard to these and all other matters raised in the written representations I am satisfied that it is expedient to confirm the Order.

Reasons – Order 3

The extent to which it appears that the route would, apart from the Order, be likely to be used by the public

21. Order 3 would extinguish a section of footpath about 127.95m long which runs through Nos 4 – 10 Bobbin Way. It has been obstructed since 2002/2003 when the properties were built. An alternative public highway is available along the adopted estate road and footway known as Bobbin Way.

22. The objectors state that the definitive line is not actually through Nos 4 – 10 but is along the rear boundary hedge of the properties. They state that if that route was made available it would be well used by the public on a daily basis as it would be traffic free and more convenient and pleasant than using the footway of Bobbin Way. Representations in support of the Order state that the footpath of Bobbin Way is in public view and does not attract anti-social behaviour as could be the case if it were hidden from view at the rear of properties. It is also pointed out that the rear gardens of Nos 4-10 are small and there is little space to put a footpath.
23. There is no evidence to suggest that, if made available for use, the route through the properties, or to the rear of the properties, would be well used by the public. Bobbin Way is a cul-de-sac with little traffic and a pavement along its length. It connects with FP 50 and is no longer than the route to be extinguished. I have no reason to believe that members of the public would be likely to use a route through or to the rear of private houses in preference to Bobbin Way. I therefore conclude that there would be little use by the public of the route to be extinguished.

The effect which extinguishment would have as respects land served by the path

24. Bobbin Way connects with FP50 and there is no land served by the Order route which would be detrimentally affected by its closure.

Other matters

25. The objectors suggest that the route should be diverted along Bobbin Way rather than extinguished as this would, in their opinion, "preserve its status". The Council refers to the judgement in *Lake District Special Planning Board ex parte Bernstein* in which it was held that it was "totally inappropriate" for a so-called diversion of a path to be to an already existing right of way. Bobbin Way is already a public highway and I therefore agree with the Council that extinguishment is the proper course of action.

Conclusions

26. Having regard to these and all other matters raised in the written representations I am satisfied that it is expedient to confirm the Order.

Overall Conclusion

27. Having regard to these and all other matters raised I conclude that all 3 Orders should be confirmed.

Formal Decisions

Order Ref: FPS/M1005/3/1

28. I confirm the Order.

Order Ref: FPS/M1005/3/2

29. I confirm the Order.

Order Ref: FPS/M1005/3/3

30. I confirm the Order.

Alison Lea

Inspector