



Order Decision

by **Michael R Lowe** BSc (Hons)

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

Decision date: 15 March 2016

Order Ref: FPS/H0724/5/1

Hartlepool Borough Council

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as the Hartlepool Borough Council Public Footpath NO.3 Diversion Order 2015.
 - The Order is dated 18 May 2015 and proposes to divert Footpath 3 in Hart Parish as shown in the Order plan and described in the Order schedule.
 - There was one objection when Hartlepool Borough Council (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order subject to the following modifications, which do not require advertisement:

In the description in Part 2 of the Schedule delete the existing text and insert:
Width 2 metres for the full length of the diversion route.

Footpath No. 3 Hart; Commencing at grid reference 447121:534885 (point A on the plan) then in a south easterly direction for 1 metre, to grid reference 447122:534884 (point D on the plan). From here the footpath continues in a north easterly direction for 8 metres to grid reference 447127:534890 (point E on the plan) then heads in a south easterly direction for 19 metres to grid reference 447141:534878 (point F on the plan). The footpath then continues in a southerly direction for 33 metres to grid reference 447148:534845 (point G on the plan) and then heads in a south westerly direction for 4 metres to grid reference 447145:534844 (point H on the plan). From there it continues in a southerly direction for 18 metres to grid reference 447145:534820 (point I on the plan). It then continues in a south westerly direction for 25 metres to grid reference 447142:534801 (point C on the plan) where it re-joins the existing public footpath.

Reasons

2. None of the parties requested a public inquiry or hearing. I have therefore considered this case on the basis of the written objection and representations forwarded to me.
 3. Mr Alan Kind is the sole objector and has raised concerns that the Order purports to divert Footpath 3 onto the footways of a carriageway highway. He suggests that if the intention is to provide the alternative route along the footway of a carriageway then the correct procedure is to stop up the footpath and replace it with an alternative highway. Following correspondence between
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the Council and Mr Kind, the Council seeks a modification to the Order to indicate that the alternative diverted route is described as a footpath. On that basis Mr Kind has withdrawn his objection. I agree that it is appropriate to describe the alternative highway as a footpath and I have therefore modified the Council's Order so as to describe the position and width of the alternative footpath as prescribed by the regulations¹.

4. A footpath is defined as a right of way on foot only, not being a footway. A footway is defined as a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only². Thus a footway is a part of a highway but is not a highway in its own right.
5. An Order under section 257 of the 1990 Act may be a stopping up or a diversion order. If it is a diversion order an alternative highway must be provided as a replacement. There is no requirement for the alternative highway to be of the same classification. It would, therefore, seem possible to provide a carriageway as an alternative highway when a footpath is diverted, and the alternative highway could be specified as the footway within the carriageway. However, as is usual with new housing development, the highway network would not become adopted as publicly maintainable or dedicated as a public highway until after the completion of the development, usually by an agreement under section 38 of the Highways Act 1980. There is no certainty that the development will be completed or that proposed new roads and ways within the development will become public highways. It is therefore the usual procedure to divert a public footpath as an initial freestanding procedure before the development commences, even though at a later date the footpath may become a carriageway by dedication under section 38 of the Highways Act 1980.
6. The main issue is whether the proposed diversion is necessary to enable development to be carried out in accordance with planning permission and, if so, to weigh in the balance the disadvantages or loss likely to arise as a result of the diversion against the advantages.
7. Full planning permission was granted on appeal for residential development comprising 23 dwellings, associated roads, drainage and landscaping on land adjacent to the Raby Arms, Front Street, Hart, Hartlepool on 8 August 2014³. Having regard to the Council's Statement and the submitted documentation, I am satisfied that the diversion is necessary to enable the development to be carried out and that the advantages of the diversion outweigh any loss.

Conclusion

8. Having regard to all these and all other matters before me I conclude that the Order should be confirmed, with the modifications as set out above.

Michael R Lowe

INSPECTOR

¹ SI 1993 No. 10 The Town & County Planning (Public Path Orders) Regulations 1993

² Section 329 of the Highways Act 1980

³ APP/H0724/A/14/2213850