
Order Decision

Site visit made on 7 March 2016

by Martin Elliott BSc FIPROW

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

Decision date: 15 April 2016

Order Ref: FPS/M2460/4/26

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Leicestershire County Council (Public Bridleway A32 (Part), Holiday Cabins, North Lane, Foxton) Public Path Diversion Order 2014.
- The Order was sealed on 6 November 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Leicestershire 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. I carried out an accompanied inspection of the existing and alternative routes on 7 March 2016. Following the site visit I sought clarification from the Council as to the interests of the landowner. The response from the Council was circulated to the parties and I have taken into account the additional representations in reaching my decision.
2. The objector makes the point that the Order plan only shows two lodges as opposed to the three lodges on the site. It is also stated that the Order plan does not show a 'deep water lake' which has been constructed. Whilst the Order map does not show all the lodges or the lake the intentions of the Order remain clear. There is nothing before me to indicate that anyone will have been misled or prejudiced by the plan not showing all the lodges or the lake.
3. The objector also contends that the route shown on the definitive map is not the same alignment as that shown on the Order plan in that the Order plan shows a 'dog leg' on the Order route. Having examined the definitive map, the route shown on the Order map corresponds with the route shown on the definitive map.

The Main Issues

4. This Order has been made in the interests of the owner of the land crossed by the footpath. Section 119 of the Highways Act 1980 therefore requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by section of footpath to be diverted that the line of the path or way, or part of that line should be diverted; and
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- (b) the path or way will not be substantially less convenient to the public; and
 - (c) that it is expedient to confirm the Order having regard to:
 - (i) the effect which the diversion would have on public enjoyment of the path or way as a whole; and
 - (ii) the effect which the coming into operation of the Order would have as respects other land served by the existing rights of way; and
 - (iii) the effect which any new public rights of way created by the Order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation.
5. Section 119(6A) of the 1980 Act provides that I must have regard to any material provision contained in a Rights of Way Improvement Plan (ROWIP) for the area covered by the Order.
6. The case of *R (on the application of Young) v Secretary of State for the Environment Food and Rural Affairs [2002] EWHC 844* is relevant. The case indicates that convenience is distinct from public enjoyment and relates to matters such as length, difficulty of walking and the purpose of the path. Where an alternative route is substantially less convenient then the Order should not be confirmed. Furthermore, where an alternative route is less enjoyable the decision maker has to balance the interests of the applicant for the order against those of the public to determine whether it is expedient to confirm the order.

Reasons

Whether it is expedient in the interests of the owner of the land crossed by the footpath that the way should be diverted

7. The existing route passes through an area occupied by a number of holiday cabins. The Council state that diversion will enable the landowner to improve the privacy for people staying in the holiday cabins. It is suggested that the diversion would make the cabins more secluded and therefore more attractive to prospective visitors, especially repeat ones. The diversion will allow the owners to maximise income in terms of the tariff charged. Even a slightly improved return on the investment will make the long term viability of this project more secure.
8. In my view the existing route will impinge on the privacy of those staying in the holiday cabins as the route provides direct views into the cabins and views of the outside seating areas. The proposed alternative route will improve the privacy of the occupants. In consequence, although I have no evidence as to the extent of any benefits to the landowner, the diversion of the bridleway will enable the landowner to charge higher tariffs and may encourage repeat visitors thereby improving the viability of the business.
9. I note the observations of the objector in relation to advising guests using the holiday cabins as to the existence of the bridleway. Further, that the location of the bridleway in relation to the holiday cabins is down to the design of the site. However, this does not mean that the diversion will not be in the interest of the landowner or preclude the diversion of the way. I address the issues relating to the planning permission at paragraph 18 below.

10. Although I do not consider that any benefits to the landowner will be significant the Order is nevertheless in the interest of the landowner. It would seem unlikely that the landowner would make an application for the diversion of the bridleway, for which a charge appears to have been made, if the diversion was not in their interests.

Whether the path or way will not be substantially less convenient to the public

11. The objector makes the point that the existing route to be diverted is 740 metres in length with the proposed alternative route some 225 metres longer making the total length of the alternative route 965 metres (30% longer). Whilst this means that the proposed alternative route is less convenient in terms of length the proposed alternative route is not subject to disturbance by cultivation. In my view the surface of the proposed alternative is more convenient than the existing route which is a cross-field path subject to cultivation. On balance although there is an increase in length the proposed alternative route is not substantially less convenient.

The effect which the diversion would have on public enjoyment of the path or way as a whole

12. The objector contends that the proposed alternative route will have a considerable negative effect on the enjoyment of the bridleway. The objector refers to a number of photographs showing the views from the existing and proposed alternative routes. The photographs identify the locations of Foxton Locks and Gumley Woods.
13. On my site visit I observed the views from the existing and proposed routes. The existing route does provide clear views of the surrounding area. I consider that the views of Foxton Locks, Gumley Woods and the surrounding countryside from the proposed alternative route are to some extent limited by the proximity of the adjacent hedge. However, the alternative route does provide extensive and pleasant views of the surrounding countryside.
14. I accept that the objector and others may take enjoyment from the views from the existing route but in my view the alternative is equally enjoyable in the context of views. Overall I do not consider that the effects on the enjoyment of the route as a whole are significant.

The effect which the coming into operation of the Order would have as respects other land served by the existing right of way

15. There is no evidence before me that the diversion would have any effect on land served by the existing way.

The effect which any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it, account being taken of the provisions as to compensation

16. Both the existing and alternative routes pass over land in the ownership of the applicant who supports the Order. There is no evidence before me of any adverse effect on the land over which the new route passes such that compensation issues are relevant.

Rights of Way Improvement Plan

17. No provisions from a rights of way improvement plan have been put before me which are material to my decision.

Whether it is expedient to confirm the Order

18. The objector refers to a condition within the planning permission for the siting of the holiday cabins and associated works that the bridleway should be retained in perpetuity. This does not preclude the diversion of the way by any other enactment, in this case section 119 of the Highways Act 1980. I also note issues relating to the planning permission but these have no bearing on the Order and I give them no weight.

19. The objector refers to the obstruction of public footpath A16. This is not a matter for my consideration.

20. Taking all factors into consideration, whilst there may be some loss of enjoyment in respect of views I do not consider this to be significant. When balanced against the interests of the owner I consider it expedient to confirm the Order.

21. The objector has suggested an alternative proposal for the diversion of the bridleway. Whilst I note this proposal, given that the diversion proposed by the Order satisfies the relevant criteria, it is not appropriate to consider any alternative proposals. In any event I have no evidence that the alternative route proposed by the objector is acceptable to the landowner and such a proposal has not been subject to the same consultation process carried out by the Council.

Conclusion

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

Formal Decision

23. I confirm the Order.

Martin Elliott

Inspector