



Order Decision

Site visit on 21 March 2016

by Sue Arnott FIPROW

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

Decision date: 14 April 2016

Order Ref: FPS/P2114/4/7

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Isle of Wight Council Public Footpath N206 Woodside Beach, Wootton, Isle of Wight Diversion Order No.1 2014.
- The Order proposes to divert part of public footpath N206 north of Lower Woodside Road at Wootton, as detailed in the Order map and schedule.
- There was one objection outstanding when Isle of Wight Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: The Order is confirmed with a modification, as set out in the Formal Decision below.

Preliminary Matters

1. A letter voicing opposition to the proposed diversion was submitted by Mr and Mrs Berry after the deadline for submission of objections and representations. Since their letter expresses similar concerns to those raised by Mrs Pickett, a statutory objector, I have considered all the points put forward in both objections.

The Main Issues

2. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by Footpath N206 that the right of way in question should be diverted;
 - (b) the new route to be provided will not be substantially less convenient to the public; and
 - (c) it is expedient to confirm the Order having regard also 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, having had regard to the provision for compensation.
 3. There is a further test that must be satisfied where the point of termination of a proposed new path differs from the existing route. Sub-section 119(2) requires that any new point of termination should be on another highway and be substantially as convenient to the public.
 4. In strict terms the new route that is proposed by this Order will connect with the present termination of Footpath N206 (labelled on the Order map as point
-

B), although the diversion would also allow the public to reach the beach at a point approximately 21 metres north west of B. The beach is not a public highway although the public enjoys access over it. Whilst the legislation does not expressly require it, I consider this additional access point onto the beach to be substantially as convenient as point B. No representations have been made to the contrary.

5. In determining this Order I am also required to have regard to any material provisions in any rights of way improvement plan for the area. Further, I am mindful of the requirements of the Equality Act 2010.

Reasons

The interests of the owner of the land

6. This Order was made by Isle of Wight Council (IWC) at the request of the agent for the owner of the Woodside Coastal Retreat near Wootton. In brief, the main reasons given in support of the proposal are to allow the managing company to ensure the safety, security and privacy of holiday makers residing in the lodges positioned on the site.
7. The present route of Footpath N206 cuts through site, separating 7 lodges from the main resort which consists of similar holiday residences and the resort's facilities. Between points A and B, the Order route leads in a straight line with lodges on both sides of an old hedged lane down to the beach, crossing a tarmac internal access road along the way.
8. The land over which the Order route passes has been used as a holiday caravan site since the 1950s. In 2013 planning permission was granted for the re-development of the site with fewer caravans, reducing the number of units from 45 to 36. These works were substantially completed around May 2014. The revised layout included the provision of a new footpath to the shore although the definitive line of Footpath N206 is not obstructed¹.
9. In February 2014, an application was made to IWC seeking a formal diversion of the footpath between points A and B onto the new route provided as part of the re-development. The reasons given to support the proposal focus on the operational requirements of the holiday site. Providing a resort with fewer units and a private sense of place raise the expectations of visitors who require a secure environment which is safe, especially for families with young children.
10. The presence of the public footpath separating a part of the site from the main facilities restricts the ability of the site owners to provide security for their clients and the presence of the public walking directly past some of the lodges impacts on the privacy afforded to those holiday-makers.
11. The objector does not challenge the reasons given for the diversion. IWC is satisfied that the diversion would be in the interests of the owner of the land for the reasons given and I do not disagree. I accept that it is the applicant's aim to move the footpath out of the otherwise enclosed site to increase the privacy and security that is provided to its residents.

¹ I have noted the objector's complaints that passage has frequently been blocked by parked vehicles near point A. On these occasions pedestrians have had no option but to use the new route to gain access to the beach. The gate at A is also reported to have been locked for some considerable time. However IWC explained that this was as a result of a Traffic Regulation Order temporarily closing the footpath to the public.

12. I recognise the benefits in terms of privacy that at least 7 lodges would enjoy if the public footpath does not pass in close proximity to their holiday accommodation, and the extra sense of security the 7 lodges positioned to the west of the footpath will enjoy if the public right of way is diverted. I therefore conclude that it would be expedient in the interests of the landowner to realign the footpath as proposed.

Convenience to the public

13. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations in the context of the role Footpath N206 plays in the local network.
14. The Order route forms part of a cul-de-sac definitive footpath that runs from Lower Woodside Road to the beach facing the Solent. There are few recorded public paths in the vicinity and, given the lack of any public car parking, it would be logical to deduce that most people now using Footpath N206 are either themselves residents of Woodside or approach by walking along at least part of Lower Woodside Road.
15. This is essentially a single track road. So too is the access road which leads from Lower Woodside Road to the 'Woodside Coastal Retreat' and the group of private residential properties at Woodside. This tarmac-surfaced private road carries public footpath N206 south west of point A.
16. The surface of the Order route A-B consists of a firm stone track (other than where it crosses the tarmac site access road.) In contrast, the proposed new route would follow the new tarmac road in part and run partly along a recently constructed stone track which also serves as private access to the property 'Belleaire'.
17. Mr and Mrs Berry complain that along this new section water leaches across the path causing it to be slippery and dangerous at times. Indeed Mrs Berry reports having fallen here. IWC has confirmed that, if the Order is confirmed, the problem will be rectified; it is included in the list of works agreed with the applicant.
18. Following work done by the applicant to the new path, there is now little difference between the two routes in terms of gradient and in one particular respect the proposed route offers an advantage over the present path. As it approaches the shore, the new route will split into two with the main path continuing down a set of 18 shallow steps. On the south-eastern side, a new alternative path will slope first eastwards then north-eastwards to re-join the main route at the bottom of the steps. With a handrail alongside it, this gradual descent will facilitate access for children's buggies², wheel-chairs and people unable to manage steps.
19. Although Mr Berry questions the width of the new path, the Order specified this to vary along its length from 3.75 metres on the tarmac section and 3.75m-4m for the gravelled section, reducing to 1.5m only for the short flight of steps and ramp. Compared with the 3m-4m wide existing path which narrows to 2m at the more steep 3 concrete steps down to the beach at B, I do not consider this to be an inconvenience of any great significance.

² I note the objector reports that families with push chairs no longer use this as an access to be beach. IWC suggests that the provision of a ramp on the new route may encourage such use to return.

20. There is no doubt that the proposed new route would be longer than the present path A-B which extends approximately 95-100m. To walk instead from A via the new route to B would amount to some 170-180m although 21 metres less if the walker chose to walk onto the beach at the bottom of the new shallow steps.
21. For walkers reaching point A from Lower Woodside Road, the additional 50m or so is likely to be a very small percentage increase in their overall journey. For most people living at Woodside, there is likely to be a saving in distance as the new route can be accessed more directly than the definitive line.
22. I accept the objector's main complaint that part of the new route will be shared with private vehicles driving to and from the properties at Woodside. In fact that situation is little different to the remainder of Footpath N206 from Lower Woodside Road. I understand that additional road safety measures have been put in place as a condition of planning permission being granted for tarmac being laid on part of the route A-B.
23. The statutory test in Section 119 requires a comparison between present and proposed routes. Weighing in the balance all the various aspects of both paths which fall under the 'convenience' heading, and noting there is at least one less gate to be negotiated on the proposed path³, I accept there will be a degree of inconvenience for walkers using Footpath N206 from outside the area but I would not regard this as substantial. For residents of Woodside there may be benefits in some respects. Overall I find that the new route would be less convenient to the public but not substantially so.

Public enjoyment

24. The objector implies that enjoyment of Footpath N206 will be diminished as a consequence of the diversion. I agree to an extent, particularly if comparing the original character of the way as an old hedged lane leading directly down to a view across the Solent before the re-development of the site. Yet there are now holiday lodges on both sides so that the sense of walking through a 'private' area is increased. The alternative route would give similar views towards the beach but for a shorter length of the path.
25. However, an important difference will be the provision of a sloping ramp in addition to the main path on the new route which will facilitate access to the beach by more people with limitations on their mobility in addition to those already using Footpath N206.
26. Having walked the route myself, and balancing the reduced views of the Solent against the increased opportunity for more people to access the beach, I conclude that overall public enjoyment of the path would not be adversely affected to such an extent as to prevent confirmation of the diversion.
27. Whilst the majority of the new route is already in place, the proposed ramp has not yet been constructed. The Order provides a period of 14 days from the date of confirmation before the diversion comes into operation. I consider that too short a time in which to arrange and carry out the works required to construct this ramp. Since this is an integral part of the alternative being provided, it is essential that it is made available from the start. Consequently I

³ There is a hand gate at B and a field gate at A on the present route although it appears the latter is not always closed. On the new route there will be a gap adjacent to a new field gate which affords private access to the property 'Belleaire'.

am minded to modify the Order to increase the delay before the Order comes into operation so as to ensure these works can be completed.

Other considerations

28. Compensation issues are not relevant here and no adverse effects arising from the diversion on any of the land concerned have been drawn to my attention. The owner of the land affected by the proposal clearly supports the Order.
29. IWC has highlighted aspects of its Rights of Way Improvement Plan 2006-2016, in particular the aim to develop the network to benefit as wide a range of users as possible, to identify achievable improvements and to improve accessibility for those with mobility difficulties. No other issues have been drawn to my attention to suggest this present proposal conflicts in any way with the policies and plans relevant here.
30. The objector raises a number of concerns about vehicular access to the community residing at Woodside – the installation of speed bumps, turning by large vehicles⁴, inconsiderate parking – all of which are understandable concerns but ones which are not relevant to my considerations when comparing present and proposed routes of Footpath N206.

Whether it is expedient to confirm the Order

31. I have concluded that the proposed diversion would be in the interests of the land owner. I have accepted that the proposed route is longer and less direct but the question is whether that amounts to a 'substantial inconvenience'. In reaching the conclusion that the additional distance is not significant in this context, I take into account that the new route would increase the opportunity for people with limited mobility to access the beach via the new ramp. I have concluded that enjoyment of the route would be slightly diminished but that any loss needs to be balanced against the fact more people will be able to use the route. I also note the support for the proposal from Wootton Parish Council and the Woodside Residents Association, and that there have been no objections from the Ramblers' Association.
32. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public. Overall, taking into account all relevant factors and having addressed the statutory tests in Section 119 of the 1980 Act, I conclude it would be expedient to confirm the diversion proposed by this Order subject to modifying the time specified in the Order to allow for the construction of the new ramp.

Conclusion

33. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modification referred to in paragraph 27 above.

⁴ It is an offence to drive a motor vehicle on a public footpath without lawful authority.

Formal Decision

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

- In Articles 1 and 2 on page 1 of the Order, delete "14 days" and substitute "56 days".

Sue Arnott

Inspector