
Order Decision

Hearing held on 17 March 2016

Site visit made on 17 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/Y3940/4/13

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as The Wiltshire Council Corsley 29 (Part) Diversion Order and Definitive Map and Statement Modification Order 2015.
- The Order is dated 28 April 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981 Act, once the provisions relating to the diversion come into force.
- There was one objection outstanding at the commencement of the hearing.

Summary of Decision: The Order is confirmed subject to modifications.

Preliminary Matters

1. I held a hearing on 17 March 2016 at Ascot Court, North Bradley, Trowbridge. I carried out an unaccompanied site inspection of the Order route and surrounding area on the afternoon of 16 March 2016 and a further accompanied site inspection following the close of the hearing.

Width

2. On my unaccompanied site inspection I noted that the width of the section immediately to the south of the kissing gate (approximately 10 metres in length) was narrower than the 2 metres specified in the Order. Although the Order is not in effect this section of the alternative route, which has been in existence for a number of years, falls between what I consider to be permanent property boundaries. Given the circumstances I raised this issue at the hearing. On the accompanied site inspection following the hearing it was noted that this section of path varied between 0.97 metres and 1.37 metres.
 3. The Council advised that the width of 2 metres was specified in the Order as this was the width given in the application to divert the path. However, they were content for the Order to be modified to reflect the width on the ground. The applicant advised that the width of the alternative route on the ground had been increased with the new boundary fence making the path wider. To provide a width of 2 metres would mean the boundary fence would have to be moved within the property.
 4. The objector made the point that a reduction of the width would render the alternative route substantially less convenient and would be contrary to the
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Council's Rights of Way Improvement Plan. I consider these elements below but given the circumstances it is appropriate to consider the Order on the basis that part of the alternative route will be at a width of between 0.97 to 1.37 metres. In the event of confirmation of the Order I propose to modify the Order accordingly.

Units of measurement

5. The Order identifies the width of the existing route with imperial measurements. In order to comply with The Units of Measurement Directive the Order should specify metric units. The Order if confirmed will be modified to identify the width of the existing path as 0.457 metres (1½ feet).

Definitive Map

6. The objector noted that the existing path as set out in the Notice of the Order did not correspond with the route shown on the 1:25,000 'Explorer' map. I noted from this map that the route of the footpath is shown following the proposed alternative route to the kissing gate and then proceeding directly across the adjacent field. The objector suggested that at some point the route of footpath 29 through the properties must have been diverted. The diversion of the footpath was therefore inappropriate and the definitive map should be modified in consequence of a previous event.
7. From my inspection of the definitive map it is clear that the existing route of footpath 29 follows the route of footpath 29 shown on the Order map. Although I note the depiction of the route on the 'Explorer' map there is nothing before me to indicate that the Order route has previously been diverted. In the absence of such evidence the definitive map provides conclusive evidence as to the existence of the Order route. It is of note that during the hearing the Council provided an Order which diverted the section of footpath 29 from the junction of The Hollow and Heathway to point A on the Order map. The alternative route provided now following a tarmac footpath leading to point A. Given this diversion and the evidence from the definitive map it is clear that the proposed alternative route connects at each end with an existing highway. The grid references for points A and B on the Order map correspond with the connection of the Order route with these two highways.
8. It follows from the above that I consider the Order to show the correct route of the section of footpath 29 to be diverted and it is on this basis that I consider the Order. I also take the view that although the route shown in the Order differs from that shown on the 'Explorer' map the intentions of the Order are clear and there is nothing to indicate that anyone will have been prejudiced.

The Main Issues

9. This Order has been made in the interests of the owner of the land crossed by the footpath and the public. 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 the section of footpath to be diverted and the public that the line of the path or way, or part of that line should be diverted; and
 - (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.
- 10. 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.
- 11. The existing route is currently obstructed at a number of points. An equitable comparison between the existing and proposed routes can only be made by disregarding any temporary circumstances preventing or diminishing the use of the existing route. The convenience of the existing route is to be assessed as if the way were unobstructed and maintained to a standard suitable for those users who have the right to use it.

Reasons

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

- 12. The existing route passes through the gardens of 22, 21 and 20 Heathway. The Council advises that the Order is in the interests of the landowners as the diversion of the footpath will provide privacy and security for the inhabitants of all three properties. It is stated that the diversion will also allow the applicants, the owners of 22 Heathway, to extend their property for which planning permission has been granted.
- 13. Mrs Churchill explained that the diversion would allow an extension to be built on their property. She pointed out that neighbours affected by the existing route had children and the existence of the footpath raised concerns as to safety and security. Mr and Mrs Churchill provided letters of support from their neighbours of the two other affected properties (20 and 21 Heathway).
- 14. In my view the footpath has a significant effect on the three properties identified and the diversion will improve privacy and security. It will also enable the applicant to build their extension. It is noted that the Council has already considered the diversion of part of the route under section 257 of the Town and Country Planning Act 1990 but took the view that an Order under this Act would not be appropriate in respect of the other two properties. The Council consequently made the Order under section 119 of the 1980 Act. I conclude that the diversion will be in the interests of the landowners.
- 15. As regards the interests of the public the Council contended that the public would not have to walk through the gardens of the three properties. This would have an effect on enjoyment. It is suggested by the Council that members of the public are more likely than not to meet the occupiers of the three properties where they could feel as if they were intruding on the occupier's quiet enjoyment of their property. The Council noted that the

alternative route provided better views which cannot be seen from the garden. The Council also suggested that the tarmac surface along part of the path will make it easier for people with mobility problems and other impairments to use and consequently enjoy the views of the surrounding countryside. The objector was of the view that that the Order was not in the interests of the public and such reference should be struck out of the Order.

16. In my opinion it is quite possible that some, but not all, path users would feel that they were intruding on the occupier's enjoyment of their properties and as such the alternative may be more enjoyable. As regards views, it may be that these are more limited from within the gardens. However, as noted by the objector, extensive views are available from the remainder of the route to the north east of point B. Views from the alternative route are available along a greater length although it should be noted that the section of path from point A to the kissing gate is enclosed by boundary features and there are no views. Whilst there are benefits in respect of views these are not significant. In terms of increased access to those with mobility problems and other impairments, although part of the path has a tarmac surface the remainder of the route is unsurfaced. Consequently I do not consider that there are benefits to this category of users arising from part of the path having a tarmac surface.
17. Whilst there are some benefits to the public I do not consider these to be of any great significance and I give them little weight. The Order is nevertheless in the interest of the public.

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

18. The objector notes that the proposed alternative route is 70 metres in length, compared to the existing 41 metres, and appears to introduce a substantial dog leg. As such the alternative was substantially less convenient. Whilst the increase in length and the dog leg amounts to some inconvenience I do not consider that this renders the diversion substantially less convenient.
19. As noted above at paragraph 4, if confirmed, it is proposed to modify the Order to reflect the current width of the path between the end of the tarmac surfaced path and the kissing gate. The objector contended that the width should be 2 metres and any reduction would render the alternative substantially less convenient.
20. The existing footpath has a defined width of 0.457 metres (1½ feet). The proposed alternative route will, for the majority of its length, be 2 metres wide with a short section of path (approximately 10 metres) being 0.97 to 1.37 metres. The alternative route is therefore, throughout its length, significantly wider and this cannot be regarded as being substantially less convenient.

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

21. No evidence has been put before me to suggest that the proposed alternative route will be less enjoyable. The existing route passes through the gardens of three properties whereas the proposed alternative route follows a tarmac surfaced path before following a field edge path which provides far reaching views across the countryside. In my view the proposed alternative would be more enjoyable than the existing route.

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

22. 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

23. The owner of the land over which the alternative route will be created has consented to the proposal. 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 (ROWIP)

24. The Council advise that the Order does not conflict with any of the aims of the 2008 to 2012 Improvement Plan or the revised plan for the period 2015-2025. The Council do not rely on any specific provision contained in the Improvement Plans but refer to aims to increase access to the countryside for buggies, older people, people with mobility and other impairments and for those who are blind or partially sighted. In relation to these elements there is no evidence before me that the Order will have any adverse effect on the categories identified although I do not consider there are particular benefits.

25. The objector made the point that the modification of the Order in respect of width would be contrary to the Council's ROWIP which specified that a diverted footpath should meet the Council's minimum standard width of 2 metres. The Council contended that a deviation from the specified 2 metres would be permissible depending on the circumstances.

26. In reaching my decision I must have regard to any material provision contained in a ROWIP. Whilst the reduction in width along part of the alternative route will mean that the route does not conform to the ROWIP, the reduction in width is only for a short section with the majority of the route being 2 metres. It should also be noted that the width of the alternative route is greater than the existing width and therefore the whole path will be wider than the existing route.

Whether it is expedient to confirm the Order

27. The Order is in the interests of the landowner and to a limited extent the public. Whilst there is some loss of convenience this does not render the proposed alternative to be substantially less convenient. Having regard to the public sector equality duty under section 149 of the Equality Act 2010 there is nothing to indicate that those with a relevant protected characteristic will be disadvantaged by any loss of convenience. In having due regard it is not necessary for any provision to be enhanced or that there should be a similar level of provision. As noted above, in terms of width the alternative is greater than the width of the existing route and is therefore more accessible. There is nothing to suggest that the diversion renders the path less enjoyable. It is accepted that, with the proposed modification to the width, the alternative route does not conform to policies contained in the Council's ROWIP. However, in the circumstances, it remains expedient to confirm the Order.

28. Taking all factors into account I consider that it is expedient to confirm the Order.

Conclusion

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

Formal Decision

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

- In the Schedule to the Order after references to '1½ feet' insert '(0.457 metres)'
- At Part 2 of the Schedule to the Order after '2 metres' insert 'except between points X and Y where the width shall vary between 0.97 and 1.37 metres'
- At Part 3 of the Schedule to the Order after 'ST 8212 4570' insert 'except between ST 8210 4574 and ST 8211 4573 where the width varies between 0.97 and 1.37 metres'
- On the Order map insert additional points 'X' and 'Y'.

Martin Elliott

Inspector

Appearances

Wiltshire Council:

Mrs B Burke

In support of the Order:

Ms S Churchill

Mr C Churchill

Mrs V Churchill

Mrs G Parkinson

Applicant

Applicant

Corsley Parish Council

In opposition to the Order:

Mr F Morland

Statutory objector

Document handed in at the hearing

- 1 Extract from Wiltshire Countryside Access Improvement Plan 2015-2025