Order Decisions

Inquiry opened on 24 July 2018 Site visit made on 23 July 2018

by Susan Doran BA Hons MIPROW

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

Decision date: 25 September 2018

Order Ref: ROW/3186991 referred to as "Order A"

- This Order is made under Section 119B(4) of the Highways Act 1980 and is known as the West Sussex County Council (Southwater) Public Path (No.1642) Part Special Diversion Order 2016.
- The Order is dated 17 March 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 28 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Order Ref: ROW/3186993 referred to as "Order B"

- This Order is made under Section 118B(4) of the Highways Act 1980 and is known as the West Sussex County Council (Southwater) Public Path (No.1650) Part Special Extinguishment Order 2016.
- The Order is dated 17 March 2016 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule.
- There were 28 objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed

Procedural Matters

- 1. This case concerns the proposed diversion of part of a public bridleway between the Downs Link and Two Mile Ash Road and the extinguishment of a linking public footpath at Christ's Hospital School ("the School") near Southwater, for school security purposes.
- 2. West Sussex County Council ("the Council") supported confirmation of the Order, but chose not to participate in the Inquiry. At the Inquiry, the case in support of the Order was made by Michael Wood on behalf of the School. In opposition to the Order was Paul Brown for the Open Spaces Society ("the OSS"), Ruth Fletcher representing Horsham District Cycling Forum ("HDCF"), together with a number of individual objectors.
- 3. I carried out an unaccompanied site visit of the Order routes on the afternoon prior to opening the Inquiry. No-one requested I make a further visit following the close of the Inquiry, and no issues arose that necessitated one.
- 4. The Council requested that Order A be amended to correct a typographical error concerning a grid reference (point R on the plan attached to the Order). I consider the Order to be clear otherwise and that no-one has been prejudiced by this error which, were I to decide to confirm the Order, could be easily corrected.

- 5. In addition, the School sought further modifications to paragraphs 1 and 2 to Order A to so as to accord with Defra guidance concerning when the new route becomes suitable for public use; and amending the date of coming into operation of the Order to the date of its confirmation. Again, such modification would be possible, if the Order were to be confirmed.
- 6. Submissions to the Inquiry included reference to the draft National Planning Policy Framework ("NPPF"). However, the revised NPPF was published and came into force on 24 July 2018. Therefore, after the close of the Inquiry I invited the parties to submit comments in writing in particular in relation to paragraph 98 of the new document. Paragraph 98 states, "Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails." The comments received were circulated to the parties for information, and I take them into account below.

The Main Issues - Order A

- 7. Further to Section 119B of the Highways Act 1980¹ ("the 1980 Act"), if I am to confirm the Order, I must first be satisfied that:
 - the Order route is a relevant highway and that it crosses land occupied for the purposes of a school;
 - it is expedient, for the purposes of protecting pupils or staff from
 - (i) violence or the threat of violence
 - (ii) harassment
 - (iii) alarm or distress arising from unlawful activity, or
 - (iv) any other risk to their health or safety arising from such activity, that the line of the bridleway, or part of that line, should be diverted (whether onto land of the same or another owner, lessee or occupier)
- 8. If satisfied on the above, I must then consider whether it is expedient to confirm the Order having regard to all the circumstances, and in particular to:
 - any other measures which have been or could be taken for improving or maintaining the security of the school;
 - whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;
 - the effect which the coming into operation of the Order would have as respects land served by the existing bridleway; and
 - 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.

¹ As inserted by the Countryside and Rights of Way Act 2000

The Main Issues - Order B

- 9. Further to Section 118B of the 1980 Act, if I am to confirm the Order, I must first be satisfied that:
 - the Order route is a relevant highway and crosses land occupied for the purposes of a school;
 - it is expedient, for the purposes of protecting pupils or staff from
 - (i) violence or the threat of violence
 - (ii) harassment
 - (iii) alarm or distress arising from unlawful activity, or
 - (iv) any other risk to their health or safety arising from such activity, that the highway should be stopped up
- 10. If satisfied on the above, I must then consider whether it is expedient to confirm the Order having regard to all the circumstances, and in particular to:
 - (i) any other measures that have been or could be taken for improving or maintaining the security of the school
 - (ii) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security
 - (iii) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the footpath under section 119B of the 1980 Act rather than stopping it up, and
 - (iv) the effect which the extinguishment of the footpath would have as respects land served by the highway, account being taken of the provisions as to compensation
- 11. In summary, the main issues raised in the objections as regards both **Order A** and **Order B** concern the provision of what is perceived to be an inferior alternative route in terms of length, surfacing and width; that the incidents reported are insufficient to warrant the diversion and extinguishment; insufficient measures have been taken to improve school security; and the Orders will not result in a substantial improvement in school security.

Reasons - Order A

Whether the Order route is a relevant highway and crosses land occupied for the purposes of a school

- 12. The Order route, part of Public Bridleway 1642, is recorded in the Council's Definitive Map and Statement. It passes through woodland (P-Q) then largely follows a surfaced maintenance track (Q-R) running between playing fields/sports pitches lying to the south of the School buildings.
- 13. It is not disputed that the Order route runs across land used for sports and recreational activities, forming part of a School. I understand that the legal constitution of the School has changed recently; nevertheless, I agree with the

School that this does not alter the fundamental purpose of the school and the manner in which the land is used for sports and recreational activities. Neither has it been suggested to me that it no longer satisfies the definition of a school for the purposes of Section 119B of the 1980 Act. I am satisfied therefore that the Order route fulfils this criterion.

Whether it is expedient that part of the bridleway should be diverted for the purposes of protecting the pupils and staff

- 14. The School caters for some 890 pupils between the ages of 11 and 18. Whilst the majority of pupils are boarders, a handful of them are day pupils. In addition a small proportion of its pupils come from challenging backgrounds. As a boarding school, the School has responsibilities to its on-site staff and pupils 24 hours a day, 7 days a week during term times. During the summer holidays, the School hosts foreign students.
- 15. The Order route crosses the playing fields which lie to the south of the school buildings comprising boarding houses along The Avenue, a Library, Theatre and Music school. During the school day the playing fields are used for sports activities, and outside school hours as recreation areas for staff and pupils.
- 16. A log covering the period February 2010 to November 2014 listed 6 specific incidents and in addition a variety of issues which were recorded as occurring on "various dates" either "regularly" or "occasionally". Overall, it is true to say as the School conceded, that the degree of severity of the incidents had declined over the years, and most are considered to be relatively minor. Nevertheless, they include at the higher end of the spectrum a man reported to be exposing himself to female pupils close to the cricket pavilion (north east of Q) whom it is said had gained access from the public right of way, an incident of abusive and threatening behaviour towards pupils not far from "the footpath" (though it is not clear where), and a health and safety incident where a member of the public left "the footpath" and was abusive to staff members who, with pupils, were engaged in clay pigeon shooting.
- 17. Three incidents in 2014 were recorded at two of the boarding houses and at the tennis pavilion changing rooms, and included theft or attempted theft. These buildings lie on the northern side of the site and/or north of The Avenue. It is not clear to me, and the School was unable to verify, that these incidents were related in any way to the Order route and were perpetrated by persons accessing the grounds from a public right of way.
- 18. Reference is also made in submissions to youths taunting and verbally abusing pupils and foreign students from the public rights of way, but these are not further detailed or quantified. Other issues which vary in intensity and frequency concerned dogs and horses. Of particular concern to the School are incidents of dog fouling and fouling by horses on the path or alongside it either side of the bridleway. In addition, dog walkers and/or their dogs were said to regularly stray from the path onto the grass areas and many were described as "repeat offenders". There had been incidents reported of dogs attacking wildlife which are described as distressing and potentially traumatic for staff and pupils. Damage to the pitches had resulted from horse riders leaving the surfaced path and galloping on the grass; and finally littering is reported as a health and safety issue.

- 19. Details are scant and generalised regarding these incidents. There is nothing to indicate that litter came from users of the Order route as opposed to from pupils or other visitors; nor how much or how frequently litter which could pose a health and safety risk was associated with use of the Order route. Neither is the extent of animal fouling quantified. One witness could not recall having seen dog mess on the playing fields. There is no evidence of health issues arising from dog fouling, but the changing use of the playing fields during the academic year coupled with routine maintenance is likely to result in any dog mess that may be present being spread around. Equally there is no evidence of injury resulting from discarded litter. Nevertheless, I accept that there may be health and safety issues associated with dog fouling and from litter, although I do not consider they have been sufficiently quantified.
- 20. I heard that staff members are bound by the School's policy regarding where they can exercise their pets. However, I agree with Objectors that incidents of dog walkers straying onto the sports pitches may well be exacerbated by the fact that staff members exercise their dogs on the grass areas. Accordingly, members of the public may have drawn assumptions about where dogs are entitled to be. There is no legal requirement for dogs to be kept on leads, a suggestion made with regard to straying dogs. Nevertheless, they are required to be kept under close control.
- 21. I consider a small number of incidents have occurred in the past which may be linked directly or indirectly to the Order route, and which arguably fall within categories (i) and (iii) above (paragraph 9). The majority of issues centre on the risk to health and safety arising from dog fouling (falling within category (iv)), which is stated to be "regular", but has not been quantified. Sussex Police whilst supporting the proposal has commented that crime levels are low. I note that the presence of the path passing through the playing fields does mean that the School is unable to challenge users and ask them to leave as they have a right to pass and repass along it. Also, I have had regard to the School's duty of care to its pupils and staff. I conclude that any benefit to be derived from the diversion of the Order route would be proportional to the small number and generally low level of incidents.

Whether it is expedient to confirm the Order

Other measures which have been, or could be taken, to maintain the security of the School

- 22. The School believes it has done all it can to tackle the issues they considered result from the presence of the Order route passing through the school grounds. Its diversion to the edge of the playing field will enable separation of the public from pupils and staff, and they argued would give greater authority to challenge persons found elsewhere within the grounds.
- 23. As regards other measures, the School had considered fencing or hedging the Order route either by enclosing it or bounding it on one side, but this had been rejected as inappropriate. It would result in loose dogs in a confined area and the need to have crossing points for staff and pupils to access the playing fields to the south. Although deployed more extensively elsewhere on site, for example around the boarding houses and teaching spaces, increasing the number of security guards and closed circuit television coverage had also been rejected as contrary to the ethos of the School, compromising the pupil's enjoyment and rights over the school grounds.

- 24. Suggestions as regards dogs included a dog control order. However, the School site is not public open space where such measures can be implemented. Further, dogs are not required to be kept on a lead on a public right of way, but rather under close control. It was suggested though, that the School could engage in more proactive intervention in dog control.
- 25. Insufficient or inadequate signage was an area highlighted where improvements could be made, for example by making it more prominent, although I note that the School felt the public did not heed the existing signage. Other suggestions included improving information for pupils as regards areas accessible to them for recreation outside school hours; and creating an inner security barrier around the buildings.
- 26. It is evident the measures already put in place by the School have resulted in a decrease in the type and level of incidents with no, or no significant, issues reported to the Inquiry subsequent to those provided by the incident log.

Whether it is likely that the coming into operation of the Order will result in a substantial improvement in security

- 27. It was argued that re-locating the bridleway to the edge of the School grounds would make it easier for staff to identify and challenge people found in places where they should not be, on the playing fields and elsewhere. In addition, the perceived impact in the minds of staff and pupils of segregating the public right of way from the area used for recreation would indicate it was a safer place.
- 28. I note that the School sees this as an opportunity to secure their boundary. However, I am not convinced this will be a result of the Order. The School falls into two distinct areas. To the north of the site, where most of the school buildings are located, access by the public is encouraged and indeed invited, for example to the sports club facilities, and the Theatre which stages public events. I heard that visitors and guests are required to report to Reception during term time and are often escorted or will be challenged if not wearing an issued badge. Theatre-goers generally have to pre-book, and there is a higher degree of 'surveillance' and staff presence when performances are held. However, I also heard that this was not always the case and the public could and do access without challenge; indeed whilst some areas are subject to more strict access arrangements, people can gain access to the grounds without passing through Reception. Accordingly, diverting the bridleway would not in itself prevent unauthorised access in my view.
- 29. To the south are the playing fields and the Order route which are less 'regulated'. I heard of the more 'porous' nature of the School site and its boundaries here which means that the public could enter the grounds from a variety of locations with little difficulty and/or if determined to do so: it seems it is not necessary to use the bridleway as a means of access. The bridleway as it passes through the School grounds is a defined feature from which it is easy to observe when people stray from it. I acknowledge that people seen straying from the Order route or seen elsewhere would be easily challenged: this is already the case with the badge system whereby non-badge wearers are challenged. I am not convinced as the School argued that people were more likely to use the bridleway to gain access to other parts of the school grounds, such that its diversion would have a significant effect.

30. The log indicates the type and level of incidents has decreased and amounts to a low level activity on the whole. As the measures already taken by the School have reduced the levels of unwanted activity, it is hard to see how the Order would result in a substantial improvement in security.

The effect which the coming into operation of the Order would have as respects land served by the existing public rights of way and the effect which the new right of way would have as respects the land over which it is created, or any land held with it

31. The land crossed by both the existing and proposed routes is in the same ownership. I am satisfied there would be no detrimental effects in this regard. I further note that both are on the same highway or one connected to it.

Other relevant circumstances

The Creation Agreement

- 32. The School entered into a Creation Agreement under Section 26 of the 1980 Act to establish a bridleway link along Footpaths 1651 and 1650 (part) between the Downs Link Bridleway and the proposed diverted section of Bridleway at T. This was conditional on the confirmation of the Orders presently before me. Consequently, a Supplementary Agreement was entered into which has taken effect. As a result, a public bridleway now exists between the Downs Link and point T. Both the OSS and HDCF remarked, and I observed at my unaccompanied site visit, that no works have taken place on the ground to effect this change and a new finger post still signs it as a footpath. I further note that when the Order was made it showed this link as a bridleway although at the time the Supplementary Agreement had not taken effect. Nevertheless, whilst this may have caused some confusion, there is nothing to suggest that anyone has been prejudiced as a result.
- 33. Notwithstanding the points raised by the OSS, I am satisfied that, if this Order is confirmed, the legal change of status has occurred and the proposed diversion would link with an existing bridleway. The implementation of ground works to provide a bridleway are not a matter for me, but an issue for the Council as highway authority and the School.

Surfacing and width of the proposed diversion

- 34. The existing route is largely open and 'visible' both for staff and users. The proposed route on the other hand would be enclosed by hedging, albeit to be maintained at a suitable height. Whilst this would reduce the feeling of openness and may create 'screened' sections, it would not be unlike other paths in the locality which are double hedged, including the Downs Link and the continuation of Footpath 1642 to Two Ashes Road.
- 35. However, if not adequately maintained, hedging and an existing ditch on one side of the proposed route could collectively reduce the effective width available to users and impact when, for example, two horses wish to pass. It may also be a factor in reducing visibility and a feeling of security, including at point S (a right angled bend) which is further compromised by a pond.
- 36. Unlike the existing route which is for the most part metalled, the proposed route will have a less durable surface subject to the vagaries of the weather and the impact of use. I heard that presently the Order route forms part of a

popular commuting route for cyclists between Southwater village and Southwater Station. The combination of a potentially muddy surface and longer route is likely to affect the number of individuals choosing to commute in this way, although I note that other parts of such a journey already include narrow, enclosed and/or muddy sections as well as ninety degree bends. Nevertheless, overall the proposed route is less attractive and less commodious in this regard compared to the predominantly metalled surfacing and open nature of the existing route and in my view offers an inferior experience for many of its typical users. I accept that horse riders may be less inconvenienced, although one rider who spoke considered that horses would soon "churn up" the proposed surface and it would quickly degrade.

- 37. I heard of the significance and potential future significance of the Order route as part of the cycle network which with further improvements to surfacing elsewhere would provide a year round all weather route for commuter and leisure use in keeping with sustainable transport initiatives, national and local government policy. As regards the revised NPPF, I agree with the view stated on behalf of the School that this proposal does not form part of a planning development, but that the NPPF provides an indicator of government policy, in this case with a view to public rights of way. There is no evidence available to me about future planning proposals in the area that would include the Order route as a commuter link; and equally no statistical evidence that cycle use would increase or decrease as a result of the Order.
- 38. Nevertheless, I consider I should attach some weight to the revised NPPF which I note seeks the protection and enhancement of public rights of way and to provide better facilities for users. In my view there is no evidence that the quality of the surface and amenity afforded by the proposed route would be an improvement over that of the existing route.

Historical significance

39. Although the existence of the path was argued to predate the School and therefore should not be 'interfered' with, I am not aware of any particular historical significance attaching to it. Furthermore, the legislation envisages circumstances whereby an existing public right of way may be diverted, so long as the necessary tests are met.

Conclusion - Order A

- 40. My conclusion necessitates a balancing exercise between the conflicting aspirations of the School to divert the Order route in the interests of pupil and staff safety, and those of the public who wish to retain the route on its current alignment with its perceived benefits and amenity value.
- 41. In this case, I conclude overall that there is limited evidence both of incidents associated with the Order route itself and access to the School grounds as a result of using the Order route that has facilitated or contributed to violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or other risk to the health and safety of pupils and staff. I further conclude that the measures already taken by the School have already impacted on the levels of unwanted activity as evidenced in the incident log, such that I find the Order is unlikely to result in a substantial improvement in security. Taking into account the tests and all other matters, it is my view that it is not expedient to confirm the Order.

Reasons- Order B

Whether the Order route is a relevant highway and crosses land occupied for the purposes of a school

42. The Order route, part of Public Footpath 1650, is recorded in the Council's Definitive Map and Statement. It runs from its junction with Footpath 1651 (X) along a surfaced track to its junction with Bridleway 1642 (Y). Again, it is not disputed that it is a relevant highway and crosses land occupied for the purposes of a school as required by Section 118B of the 1980 Act. As above, I am satisfied that the Order route fulfils this criterion.

Whether it is expedient that part of the footpath should be stopped up for the purposes of protecting the pupils and staff

- 43. As above, the log does not identify any of the more serious incidents as attributable with any degree of certainty to the Order route, but rather the possibility that it facilitated the perpetrators in accessing other parts of the School grounds. Again it remains a possibility that incidents of dog fouling and littering relate to use of this footpath, but there is limited evidence. The Order route provides a link with the bridleway proposed to be diverted, and again its presence means that the School is unable to challenge users and ask them to leave as they have a right to pass and repass along it.
- 44. On balance, and having regard to the School's duty of care to its staff and pupils, I conclude that any benefit to be derived from the stopping up of the Order route would be proportional to the small number and generally low level of incidents.

Whether it is expedient to confirm the Order

Other measures which have been, or could be taken, to maintain the security of the School

45. As above, the School believes it has done all it can to tackle the issues they considered result from the presence of the Order route passing through the school grounds. Again, I consider the measures already put in place by the School have resulted in a decrease in the type and level of incidents with no, or no significant, issues reported to the Inquiry subsequent to those provided by the incident log.

Whether it is likely that the coming into operation of the Order will result in a substantial improvement in security

46. Stopping up the path would remove public access to this part of the School site, but would not significantly reduce the opportunities for people to gain access to the grounds elsewhere for the reasons discussed above. Accordingly, in my view, and in view of the measures already taken which have reduced levels of unwanted activity, confirmation of the Order would not result in a substantial improvement in security.

The availability of a reasonably convenient alternative route

47. It is not clear to me how well used this route is by the public, and there is no obvious alternative route.

The effect which the extinguishment of the footpath would have on land served by it, taking account of the provisions for compensation

48. The Order route provides vehicular access in part to Stedman's Cottage. There is no evidence before me that the proposed extinguishment of the path would have any detrimental effect on the property which lies within the School grounds.

Other relevant circumstances

49. Again, I have considered the historic nature of the path. However, as above, there appear to be no circumstances that would prevent its stopping up on these grounds, subject to the relevant tests as provided for by the legislation being met.

Conclusion - Order B

- 50. As above, my conclusion necessitates a balancing exercise between the conflicting aspirations of the School to stop up the Order route in the interests of pupil and staff safety, and those of the public who wish to retain the route.
- 51. In this case, I conclude overall that there is limited evidence both of incidents associated with the Order route itself and access to the School grounds as a result of using the Order route that has facilitated or contributed to violence or the threat of violence, harassment, alarm or distress arising from unlawful activity or other risk to the health and safety of pupils and staff. I further conclude that the measures already taken by the School have already impacted on the levels of unwanted activity as evidenced in the incident log, such that I find the Order is unlikely to result in a substantial improvement in security. Taking into account the tests and all other matters, it is my view that it is not expedient to confirm the Order.

Other matters

52. I heard of another school in Horsham through which a public right of way passes and which I understand caters for a higher proportion of vulnerable children, but where closure or diversion was not considered necessary. Whilst that may be so, I am not fully aware of the circumstances and must confine my consideration to the evidence and arguments that are before me as regards the School and the Order routes in question.

Overall Conclusions

53. Having regard to these and all other matters raised at the Inquiry and in written representations, I conclude that Orders A and B should not be confirmed.

Formal Decision

54. I do not confirm Orders A and B.

S Doran

Inspector

APPEARANCES

In support of the Order:

Michael Wood ET Landnet Limited, representing Christs

Hospital School

who called:

Mike Walker

Jon Perriss

Dayle Kirby

Opposing the Order:

Paul Brown Local Correspondent and Case Officer, Open

Spaces Society

Ruth Fletcher Horsham District Cycling Forum

Michael Gimber

Stephanie Lyons

Ron Bates

John Knightley

Councillor Claire Vickers

Councillor Tricia Youtan

Simon Leighton

Joanna Bardot

Horsham District Council

DOCUMENTS

- 1. Proof of Evidence of Paul Brown on behalf of the Open Spaces Society
- 2. Amended Statement of Case of Ruth Fletcher on behalf of Horsham District Cycling Forum
- 3. Opening Statement on behalf of the Applicant, Christ's Hospital School
- 4. A3 Ordnance Survey map extract of the area surrounding the Order routes
- 5. Statement of Councillor Tricia Youtan
- 6. Proposed modifications to the Order, submitted on behalf of Christ's Hospital School
- 7. Statement of Councillor Claire Vickers
- 8. Closing Statement on behalf of Christ's Hospital School
- Documents submitted by Ruth Fletcher comprising: Extract from Design and Access Statement concerning Blue Coats Sports Centre, Christ's Hospital School; Report to Heston and Cranford Area Committee (Planning) 27 May 2004, Heston Schools – Diversion of Public Footpath Section 119B Highways Act 1980; Planning Inspectorate Order Decisions FPS/N1160/3/1, FPS/E0345/3/1, FPS/P019/4/9, FPS/P3800/3/3; R (oao) Governors of Hockerill College v Hertfordshire County Council [2008] EWHC 2060 (Admin)



