
Order Decision

Site visit made on 28 May 2019

by K R Seward Solicitor

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

Decision date: 04 June 2019

Order Ref: ROW/3215299

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the South Norfolk District Council (Footpath No. 7 (Part) Broome) Public Path Diversion Order 2018.
- The Order is dated 11 January 2018 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 South Norfolk District 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. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
2. I achieved access despite dense hedgerow at both ends of the current path proposed for diversion. For the purposes of my considerations I shall disregard the fact that the existing path is currently obstructed.
3. A copy of the Order Map is attached for reference purposes as I refer to points shown on the Map.
4. There is one statutory objector, being The Open Spaces Society.

Main Issues

5. For the Order to be confirmed, by Section 257 of the 1990 Act I must be satisfied that it is necessary to divert the footpath in order to enable development to be carried out in accordance with the grant of planning permission. This is subject to the development not being substantially complete.
6. In addition to the statutory test set out above, paragraph 7.15 of the Rights of Way Circular 1/09¹ advises that the grant of planning permission does not mean that a public right of way will automatically be diverted or stopped up. However, an authority must have good reasons to justify a decision either not to make or not to confirm an order.
7. The disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near the existing highway, should be weighed against the advantages of the Order.

¹ Published by the Department for Environment, Food and Rural Affairs

Reasons

Whether it is necessary to divert part of the footpath to enable development to be carried out

8. The application concerns part of Footpath 7 Broome ('FP7') which crosses a field adjacent to No 39 Yarmouth Road. Planning permission was granted on 31 March 2017² for residential development to provide five detached dwelling houses on the land. The application seeks a diversion of the path in order to facilitate that development. The land for both the existing and proposed routes lies within the ownership of the applicants.
9. The development has not commenced and at the time of my site visit the field was fallow.
10. The site layout plan for the approved development illustrates how the proposed dwelling for plot 3 would be built over the existing path. The current alignment of the path also runs through proposed gardens and boundary fencing.
11. In those circumstances I consider that it is necessary to divert the relevant section of FP7 to enable the development to be carried out.

The disadvantages or loss likely to arise as a result of the diversion

12. Currently, the cross-field path for FP7 continues in virtually a straight line beyond the field boundary along another public footpath.
13. Instead of proceeding across the field for about 90m, the diverted path would follow what is currently the field boundary beside the property at No 39 for around 65m. It would be separated from the new development by a newly planted hedge.
14. For some walkers who enjoy the directness of the current route, encountering a change in direction upon reaching point 'A' might be less enjoyable. Once past that point the ongoing path crosses heathland where there is a combination of hedges, trees and open areas. As such, it is not possible to see from the field a long continuous path stretching ahead. Any consequential loss of enjoyment from the change of direction is unlikely to be significant in the circumstances nor is the angle of the turn so dramatic to be much less convenient.
15. Walkers may currently enjoy the experience of a longer route across an open field with space all about as offered by the existing alignment. For others, the change in direction and shorter route will not be an issue. Indeed, some users may prefer a more clearly defined route. It is the presence of housing next to the new route that will make it a less enjoyable experience than one that is away from development as at present.
16. Circular 1/09 guides that in considering potential revisions to an existing right of way that are necessary to accommodate planned development, preference should be given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic. The Norfolk County Council Rights of Way Improvement Plan 2007-2017 provides³ that "It will not generally be

² Pursuant to planning ref: 2016/2689

³ At paragraph 6.3.3 of the document.

acceptable to divert a footpath or bridleway along a road or immediately beside a road (whether new or existing).”

17. The new route would run perpendicular to the C128 Yarmouth Road⁴ rather than along or beside it. Therefore, the local policy would not be contravened. Whilst the new route would not be through an open or landscaped area as advocated by the Circular, it would run beside one of the new plots giving some separation distance from the vehicular access serving two of the dwellings. Thus, the national guidance is not offended.
18. I do not see that A-B is further away from the road than A-C. The exit point would be onto Yarmouth Road which is no different from the position now. In both cases walkers would need to cross over Yarmouth Road to reach the footway on the opposite side.
19. There will be a vehicular access for two plots quite near to the new exit point whereas existing point B emerges much further away from any accesses. Nevertheless, visibility for users of the path should remain good.
20. Point B is approximately 30m to the north-east of point C. For walkers heading in or coming from a northerly direction along Yarmouth Road, the diversion will involve a longer stretch of footway walking and exposure to traffic to reach the path. On the other hand, walkers heading to or from the south will have less distance to travel along Yarmouth Road. The impact in this regard is neutral.

The advantages to be conferred by the proposed Order

21. The diversion would facilitate the delivery of five new homes.
22. There is very little grass verge at the current exit point onto Yarmouth Road. In comparison, the layout of the proposed housing scheme allows more space at the new exit point for refuge from passing traffic.
23. There is no defined width for the current path. Therefore, it would be required to be reinstated by section 134 of the Highways Act 1980 to a minimum width of 1m⁵ after ploughing or lawful disturbance from agricultural use. The diverted path would be wider at 3m and benefit from a consolidated surface. It would be solely for walkers and not subject to disturbance from agricultural operations.
24. Neither route crosses Broome Heath, but they are near to this access land which the public can use for the purposes of open-air recreation under the Countryside and Rights of Way Act 2000. It appears to be popular with dog walkers. For residents closer to point C it will be slightly quicker as an access to the Heath and Loddon Road. Properties on the east side of Yarmouth Road could access point C along the grassed verge without entering the carriageway. Any such benefits are marginal, but there could be some improved future use by people seeking to access the Heath via a clearly defined, surfaced and wider route.

Conclusion

25. I consider that the diversion has been shown to be necessary to enable development to be carried out. There are some negative impacts. As discussed, it provides a less direct route which will not be as convenient or enjoyable for

⁴ Also referred to as Old Yarmouth Road

⁵ As provided by Schedule 12A of the 1980 Act

some walkers albeit the effect is unlikely to be significant. There will be a loss of enjoyment from the proximity to housing on both sides from existing and new development unlike the existing open cross-field path.

26. Taking all factors into account, the disadvantages and losses are in my view outweighed by the advantages in the provision of the new homes and the provision of a wider, surfaced path that may better facilitate access to Broome Heath without risk of periods of unavailability through surface disturbance.

27. I conclude that the Order should be confirmed.

Formal Decision

28. I confirm the Order.

KR Seward

INSPECTOR

