
Order Decision

Site visit made on 23 September 2019

by Paul Freer BA(Hons) LLM PhD MRTPI

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

Decision date: 05 November 2019

Order Ref: ROW/3219112

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and also section 53A(2) of the Wildlife and Countryside Act 1981, and is known as the Oxfordshire County Council Nuffield Footpath No.25 and Stoke Row Footpath No.24 (part) Public Path Diversion and Definitive Map and Statement Modification Order 2015.
- The Order was sealed on 15 September 2015 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule and to modify the Definitive Map and Statement in that respect.
- There was one objection, from the Open Spaces Society, outstanding when Oxfordshire 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.

The Main Issues

1. The Order has been made in the interests of the owners 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 owners of the land crossed by the section of footpath to be diverted 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;
 - (c) the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public, and
 - (d) 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.
2. 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 for the area covered by the Order.

Reasons

Whether it is expedient in the interests of the owners that the line of the path or way, or part of that line should be diverted

3. Part of the existing route passes through the garden to Howberrywood Farmhouse. The garden is relatively small and, at its nearest point, the footpath is some 9 metres from the house. Walkers using the footpath pass very close to windows in the house that serve habitable rooms, as well as to a patio area to the side of the house. In my view, the mere presence of walkers in the garden results in an unavoidable loss of privacy and sense of intrusion to the occupiers of the dwelling, and significantly detracts from the amenity value of the garden space.
4. I noted during my site visit that there were several pieces of children's play equipment in the garden. I accept entirely the landowner's point that the sudden appearance of walkers (the majority of whom, it must be remembered, would be total strangers) in the garden must be disconcerting for children playing in that space. I therefore consider that it would be in the best interests of those children if the path was to be diverted.
5. I accept that there are situations around the country whereby public roads and footpaths pass in close proximity to the front of houses at a similar distance, or even less, to that in this case. However, I am mindful that in this case the footpath actually passes through the garden to Howberrywood Farmhouse. In my view, and adopting the perspective of the owner and occupier of the dwelling, there is a significant difference in passing through (or, for that matter, being able to stop and stand within) the private garden of someone's house compared to passing in front of it. For that reason, I consider that the circumstances in this case can be distinguished from other situations where a public route passes close to, but outside of, the curtilage of a residential property.
6. Accordingly, for all the above reasons I am satisfied that diverting the footpath to avoid passing through the curtilage of Howberrywood Farmhouse is in the interests of the landowners.

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

7. The diversion of the footpath would result in an increase of approximately 75 metres in the length of the footpath. However, that additional distance must be considered in relation to the route as whole. The landowner indicates that by the time walkers have reached the point where the diversion would begin, they would already have covered a distance of some 1.74 kilometres if travelling from the direction of Nettlebed. Similarly, walkers would have travelled some 1.59 kilometres if travelling from the direction of Highmoor; some 2.60 kilometres of travelling from Nuffield; or some 1.98 kilometres if travelling from Stoke Row. In relation to these distances, the increase of 75 metres would equate to an increase of between 2.6% and 4.1%. I have no reason to dispute the accuracy of these distances or the percentage increases quoted.
8. I am also mindful that the existing route is used primarily for recreational purposes rather than to reach a specific point. In that context, the additional 75 metres in the length of the route would not be significant. Furthermore, the

proposed diversion would pass over a greater length of grassed surface and would reduce the amount of ploughed field that needs to be crossed. The difficulty in traversing this ploughed field is a point raised in some non-statutory responses to the Order, the authors of which also confirm that the difficulties experienced in crossing this ploughed field detract from their enjoyment of the walk. The proposed diversion would therefore not only have the benefit of making the path easier to follow for those not familiar with the route, it would also make for easier terrain over a greater distance for recreational walkers.

9. Having regard to all of these points, I am satisfied that the proposed diversion would therefore not be substantially less convenient.

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

10. The Open Spaces Society point out that the complex of buildings at Howberrywood Farm is unique on the footpath, and provide a pleasant and interesting punctuation in the routes between Nettlebed, Nuffield and Stoke Row. This group of buildings includes a statutorily listed Grade II barn, probably dating to the early C18, adjacent to the main farmhouse. The Open Spaces Society considers that the farmhouse and barn form a visual group, and that the best place from which that group of buildings can be appreciated is from the Nuffield Footpath No. 25.
11. I concur with the Open Spaces Society insofar as the farmhouse and barn do form a visual group, and that part of the visual interest associated with this group of buildings derives from juxtaposition between the farmhouse and the barn. I also acknowledge that views of the south elevation of the farmhouse from the diverted footpath would be at a greater distance and partly filtered by intervening vegetation, albeit glimpsed views are still possible.
12. However, the Nuffield Footpath No. 25 is not the only position from which this group of buildings can be appreciated. Indeed, in my view, a better vantage point is provided by the Nuffield Bridleway No.17, from where the juxtaposition of farmhouse and the barn may be readily appreciated. The latter position also provides oblique views of the south elevation of the farmhouse. Consequently, whilst the proposed diversion would change the way in which the complex of buildings at Howberrywood Farm is experienced, it not negate the pleasant and interesting punctuation in the route provided by the buildings or detract from the ability of those interested to appreciate the architectural merit of those buildings.
13. There is, as the landowner points out, a further factor to be taken into account in relation to the public enjoyment of the path. As indicated above, the existing route passes through the garden of Howberrywood Farmhouse. I concur with the applicant that some people using the path may not feel comfortable passing through someone's private garden or lingering there to view the complex of buildings. I note that this was also a point raised in some non-statutory responses to the Order and, whilst others may have no difficulty in such circumstances, I was myself acutely aware of being within a private space when passing through the garden as part of my site visit, particularly so given that the occupier was clearly in residence at the time. I therefore consider that removing any sense of intrusion and/or discomfort experienced by those using the path would be a benefit arising from the proposed diversion.

14. Having regard to all these factors, I do not consider that the diversion will have any adverse effect on the public enjoyment of the path as a whole. If anything, it would in my view enhance the public enjoyment of the path.

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

15. The landowner(s) and the occupiers are all of the view that the diversion would be a positive benefit in terms of freeing them of the obligation to manage the land in accordance with the existence of a public right of way running through it.

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

16. The proposed alternative route crosses land entirely in the ownership of the original applicant for the Order and other land owners. These land owners clearly support the diversion.

Whether the point of termination of the alternative path would be on the same highway, or a highway connected with it, and would be substantially as convenient to the public

17. The existing point of termination where the Nuffield Footpath No. 25 meets the Stoke Row Footpath No. 24 would be unaffected by the proposed diversion of the footpath. The point where the Nuffield Footpath No. 25 joins the Nuffield Bridleway No. 17 would be altered to a point some 38 metres to the south-east of where it currently meets it (from where it currently passes through the garden of Howberrywood Farmhouse). However, for the reasons set out in paragraph 7 above, this would be substantially as convenient to the public.

Rights of Way Improvement Plan

18. My attention has not been drawn to any objectives or proposals in the Oxfordshire Rights of Way Management Plan 2015-2025 with which the proposed diversion would conflict. The proposed diversion would however be consistent with the objective expressed in that plan of balancing the needs of users and landowners.

Whether it is expedient to confirm the Order

19. Having regard to all of the above, I conclude that it is expedient to confirm the Order.

Other Matters

20. The Open Spaces Society has proposed its own diversion of the Nuffield Footpath No. 25, a copy of which has been provided to me. In effect, the proposed alternative skirts around the curtilage of Howberrywood Farmhouse and thereby avoids crossing through the garden to that dwelling. The Open Spaces Society points out that this is a less circuitous route than the diversion subject to this Order, particularly for those approaching from the north. However, the alternative diversion route put forward by the Open Spaces Society is not formally before me and I have therefore given it no further consideration.

Conclusion

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

Formal Decision

22. I confirm the Order.

Paul Freer

INSPECTOR

**Highways Act 1980
Sec 119**

**Order to Divert
Nuffield Footpath No. 25
and Stoke Row
Footpath No. 24 (part)**

**Existing Nuffield Footpath
No. 25 to be deleted**

A - B - C

Length: 223 m approx.

**Existing Stoke Row Footpath
No. 24 (part) to be deleted**

C - D

Length: 7 m approx.

**Proposed new route
of Footpath**

E - F - G - D

Length: 305 m approx.

Width: E - F - G 1.5 m
G - D 3 m

**Approximate route of
unaffected rights of way**



Parish boundary



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationary Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Oxfordshire County Council Licence No. 100023343

OS Reference: SU 6885

Scale 1:2500 @ A3

Drawn By: DJR

Date: 14 August 2015

Drawing No: HA1880/452e



**OXFORDSHIRE
COUNTY COUNCIL**

