

|  |
| --- |
| **Order Decisions** |
| Site visit made on 14 April 2021 |
| **by Barney Grimshaw BA DPA MRTPI (Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 27 April 2021** |

|  |
| --- |
| **Order Ref: ROW/3248460 referred to as Order A** |
| * This Order is made under Section 26 of the Highways Act 1980 (the 1980 Act) and is known as the Kent County Council (Public Footpath ER273 Ringwould with Kingsdown) Public Path Creation and Definitive Map and Statement Modification Order 2019. |
| * The Order is dated 5 December 2019 and proposes to create a public footpath in the vicinity of East Bottom Farm, Kingsdown as shown on the Order Map and described in the Order Schedule. |
| * There were 2 objections outstanding when Kent 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.** |
|  |

|  |
| --- |
| **Order Ref: ROW/3248461 referred to as Order B** |
| * This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Kent County Council (Public Footpath ER273 (Part) Ringwould with Kingsdown) Public Path Extinguishment and Definitive Map and Statement Modification Order 2019. |
| * The Order is dated 5 December 2019 and proposes to extinguish a public footpath in the vicinity of East Bottom Farm, Kingsdown as shown on the Order Map and described in the Order Schedules. |
| * There were 2 objections outstanding when Kent 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.** |
|  |

Procedural Matters

1. I made an unaccompanied inspection of the area on 14 April 2021, when I was able to walk the whole of the route proposed to be created (Order A) and view the route proposed to be extinguished (Order B).
2. In writing this decision I have found it convenient to refer to points on the Order routes as shown on the Order Maps. I therefore attach copies of these maps.

The Main Issues

Order A

1. The requirements of Section 26 of the 1980 Act are that, before confirming this Order, I must be satisfied that there is a need for a footpath along the line indicated on the Order Map and that it is expedient to create it having regard to:
2. the extent to which the way would add to the convenience or enjoyment of a substantial section of the public or to the convenience of local residents, and
3. the effect the creation of the way would have on the rights of persons with an interest in the land, taking into account the provisions for compensation.
4. I should also have regard to any material provision of a Rights of Way Improvement Plan prepared by any local authority whose area includes land over which the proposed path would be created.

Order B

1. The requirements of Section 118 of the 1980 Act are that, before confirming this Order, I must be satisfied that it is expedient that the footpath should be stopped up having regard to:

* the extent that it appears that the path would, apart from the Order, be likely to be used by the public, and
* the effect, which the extinguishment of the right of way would have, as respects land served by the path, account being taken of the provisions as to compensation.

1. I should also have regard to any material provision of a Rights of Way Improvement Plan prepared by any local authority whose area includes land over which the Order would extinguish a public right of way.
2. In addition, in cases such as this, where an Order to stop up a path is concurrent with an Order to create a new path or way, I may also have regard to the extent to which the Public Path Creation Order would provide an alternative path, when considering the extent to which the path would be likely to be used.
3. Temporary circumstances, which prevent or diminish the use of the path by the public, must be disregarded.

Reasons

Order A

The need for the footpath

1. The proposed new footpath is in fact the route that is already used by the public as an alternative to the definitive line of Footpath ER273 and has been for more than 25 years according to the landowner. The definitive line is currently obstructed by a field gate and a wire fence, but these temporary obstructions must be ignored when considering the current Order.
2. According to the landowner there was an issue with regard to public safety and the potential danger to people crossing the field in which horses are kept on the line of the existing footpath. The alternative route was therefore provided by the landowner and has been used by the public since the 1990s.
3. On my visit the proposed new path appeared to be well used although somewhat affected by overgrowth. It appeared similar in character to the continuation of Footpath ER273 south-west of Point A.

The benefits to the public and local residents

1. The main benefit of the proposed footpath, when suitably cleared and constructed as is proposed, will be the provision of a direct unobstructed link from Bayview Road to the continuation of Footpath ER273 south-west of Point A. This will be fenced on both sides and avoid any risk of conflict between path users and horses or other livestock kept on adjoining land.
2. An objector has pointed out that the proposed path is currently narrow and often overgrown and that access to it is difficult for users with mobility problems due to the presence of a bank and low wooden bar near Point C. However, on behalf of Kent County Council, the Order Making Authority (OMA), it is stated that the landowner has agreed to remove the wooden bar, cut back vegetation and install a handrail to provide easier access and also to improve the path surface, repair or renew fencing and clear undergrowth and overgrowth to enable the full width of the path (1.8m) to be available to users. The Order makes clear that it will not come into force until the Council has certified that the route has been suitably constructed for public use. Order B also makes clear that the existing path will not be extinguished until the new path has been made fit for public use.

The effect on persons with an interest in the land

1. The owner of the land crossed by the proposed path applied for the existing footpath to be diverted on to this route in 1990 and appears to have believed that this had been approved. However, as the termination points of both the existing path and the proposed new one are situated on an unadopted road rather than a public highway, such a diversion was not possible under the relevant legislation. It is clearly his view that the formal creation of the new path (and consequent stopping up of the existing path) will be beneficial to his interests.

Conclusions with regard to Order A

1. On balance, it is my view that there is a need for this footpath and that, subject to the improvements proposed, it is expedient to create it with regard to the convenience or enjoyment of a substantial section of the public and local residents, and the effect the creation of the way would have on the rights of persons with an interest in the land.

Order B

The likely use of the path

1. As previously stated, the path is currently obstructed and has not been used by the public for a considerable period. If the obstructions were removed it seems to me to be likely that most people would continue to use the path dealt with in Order A in preference to this path as it appears to be a more natural continuation of the rest of Footpath ER273 and avoids crossing a field in which horses or other livestock are kept.
2. Although this section of the path is currently open and unfenced its width is recorded as being 6ft (1.8m) and it would be open to the landowner to restrict it to this width in some way if this was seen as desirable for the management of his land and livestock.

The effect on land served by the path

1. The owner of the land crossed by the path has sought its closure (and replacement with the Order A route) which he believes will be beneficial for his land. I am not aware of any effect of the proposed closure (and replacement) on any other land served by the path.

Conclusions with regard to Order B

1. Overall, it is my view that following the creation of the Order A path it is expedient that this path should be stopped up with regard to the extent that it is likely to be used by the public and the effect on land served by the path.

The Rights of Way Improvement Plan (ROWIP)

1. I have not seen a copy of the ROWIP relating to this area but neither the OMA nor any other party has raised any issue with regard to this.

Conclusions

1. Having regard to these and all other matters raised, I conclude that both Orders should be confirmed.

Formal Decisions

1. I confirm both Orders.

Barney Grimshaw

**Inspector**

