
Order Decision

Site visit made on 28 February 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 27 March 2017

Order Ref: FPS/T5150/5/3

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the London Borough of Brent (Footpath No. 87 Diversion) (No. 1) Order 2016.
- The Order is dated 9 March 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when the Council of the London Borough of Brent 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. One of the two objections was made by a single local resident but was accompanied by a signed petition. The Order Making Authority (the 'OMA') confirmed that the letter and petition were received the day following the end of the statutory notification period and, in the Council's view, did not constitute a valid objection. However, the Council proceeded to consider the objections. I have done the same.
2. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking into account the written representations, including the two objections and the petition, together with three letters of support.
3. Part of the existing route of Footpath No. 87 has been closed and an alternative route provided. A Temporary Footpath Closure Order came into force on 8 April 2016, which was the subject of extension to 31 July 2017 or until the completion of works of development whichever is the earlier.

The Main Issues

4. The Order under Section 257 (and hereafter referred to as 'the Order') was made because it appeared to the OMA that it was necessary to divert the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act. The merits of the development that has been permitted are not at issue. I shall consider whether it is necessary to divert the footpath to enable development to be carried out.
 5. I shall consider whether the development is substantially complete.
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6. Even if necessary to divert the path to allow implementation of the permission, my confirmation of the Order is discretionary. I shall consider the merits and de-merits of the proposed stopping up in relation to the particular facts of the case.

Reasons

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

7. The Planning Permission referred to in the Order, reference 15/3161, is for “the demolition of existing buildings on site and erection of replacement building to accommodate a three storey 9FE secondary school for 1750 pupils (1350 11 to 16 year olds and 400 post 16) with associated car parking, servicing and circulation space, Multi Use Games Area, All Weather Pitch, games area and other hard and soft landscaping together with the diversion of Public Right of Way (PROW) No 87 at Ark Elvin Academy, Cecil Avenue, Wembley, HA9 7DU.”
8. I have been given copies of the planning permission and the report that was considered by the London Borough of Brent Council’s Planning Committee on 22 October 2015 when the planning application was determined and which included relevant extracts of plans and drawings of the development.
9. I am satisfied that the planning permission directly relates to the land crossed by the Order route. Should the present alignment of the footpath be not diverted then the planning permission cannot be implemented as part of the route would pass through the new school building, staff car park and school external concourse. For this reason, I am satisfied that it is necessary to divert the footpath to enable the development to be implemented.

Whether the development is substantially complete

10. When I carried out my site visit, I was unable to walk part of the path that has been temporarily stopped up. That said, I was able to view the stopped up route and observed that the two wings to the new school building comprising part of the development that has been permitted have been built over sections of the footpath. Although the buildings are presently under construction, the proposed staff car park, the external school concourse, the All Weather Pitch and Multi Use Games Areas have not as yet been provided.
11. Guidance in DEFRA¹ Circular 1/09 at paragraph 7.1 explains that where a development is completed before the Order has been made or confirmed, the powers under section 257 of the 1990 Act are no longer available. However this is clearly not the case here and there is significant work that remains in order to implement the planning permission, most importantly along the route of the present alignment of public footpath No. 87. I am therefore satisfied that the development is not substantially complete.

The merits and de-merits of the proposed diversion

12. I shall first describe the current footpath (as far as it still exists) and the proposed diversion together with proposals for the improvement of a 45m section of the existing path before considering the arguments put forward by two objectors comprising the Open Spaces Society (OSS) and a local resident

¹ Department for Environment Food and Rural Affairs

on behalf of 52 local petitioners as to why the Order should not be confirmed. During my site visit, I was able to view the existing alignment of the footpath where this is stopped up, walk the length of the existing path that remains open and which is proposed to be improved in terms of surfacing, together with the proposed new footpath and also walk onto the area of the existing playing fields towards the western boundary of the school playing fields with Clifton Avenue and Jesmond Avenue.

13. Footpath No. 87 leaves London Road at point B immediately east of 157 London Road, taking a northerly direction between the existing security fencing that forms the western boundary of the present Ark Elvin Academy school playing fields and the allotments to the east of Cecil Avenue to point G. The path then deviates slightly to the east past the site of former demountable school buildings to point F. It then takes an easterly direction, passing between the school playing field and the former asphalt tennis courts to point E, which was the pedestrian entrance gate into the playing fields from the school. It then proceeds to point D at a point where the footpath separates the Academy from St Joseph's RC Junior School before turning north again past point C to join High Road between Elizabeth House and Brent House at point A. The path does not have a defined width stated in the Definitive Map and Statement. However, the path that remains is largely of either asphalt or concrete and its dimension varies between some 1.35m at its narrowest to 3.35m at its widest.
14. The proposed diversion does not affect the start or finish of the path. From London Road at point B, it runs along its present alignment for a distance of approximately 88m to Point H before taking a roughly north easterly route in a series of short dog-legs numbered 1, 2, 3, 4, 5 and 6 on the Order Map between the 'All Weather Pitch' that has been permitted and the existing playing fields, before re-joining its present alignment at a point to the west of St Joseph's RC Junior School at Point D and thence linking back to High Road past point C to point A. The new footpath lengths are finished in asphalt between security fencing associated with the school premises, which have been set back to enable the width of the new footpath lengths to be widened to between 3.4m and 6.2m. The wider parts are at the bends in order to accommodate the necessary curved radii. These dimensions are intended to provide a more spacious and welcoming feel with clear inter-visibility at corner points. The present fence line along the eastern boundary to the allotments and outside the school site will be removed thus allowing this part of the footpath to be subsumed into the allotment area. Purpose designed street lighting will be provided along the new path.
15. The section between D and 7 will be improved by widening to a width of between 3.40m and 3.46m for a distance of 45m.
16. The OSS acknowledges the need for the diversion to enable the permission to be implemented. However, it believes that the proposed diversion is substantially less convenient to the public and will deny access to the wider area of the open space that has historically been used and enjoyed by the public. This objection is repeated by Mrs Jaine Lunn who also represents 52 local residents who have signed a petition that the series of dog-legs will not provide good levels of security and who believe that there is a public right of way over the existing playing fields that has been enjoyed by local people for many years. In particular, it is claimed that rights of way exist by prescription

onto the playing fields from Clifton Avenue and Jesmond Avenue and that these have recently been fenced off thus preventing direct free access.

17. I was able to view and experience the series of dog-legs within the path's alignment and note that the width and alignment are more than adequate. In addition, the path is widened at corner sections and a sense of openness prevails. There is also good inter-visibility and lighting is proposed, which would help prevent any hiding places, unlike sections of the existing route where it adjoins an area of dark and dense shrubbery and scrub trees. Moreover, the high quality surfacing and general width designed to comply with DMRB² and RMH Guidelines³ would provide manageable conditions for wheel chair users to pass each other. The proposed route would be a better path for such users, as well as for people with push-chairs because of its width, its lighting and surfacing. On the matter of convenience, the additional length of 2.5m would not be noticeable for the majority of users.
18. In terms of access from both the existing path and from nearby residential streets to the playing field area, the OMA point out that the playing field is not a formally declared public open space and assert that there are no prescriptive rights and no valid claim has been registered. I agree with the OMA that this aspect of the objection has no relevance to the proposal to divert Footpath No. 87 along the proposed route. Moreover although the objectors claim that informal access across the playing fields to local schools and public transport facilities from Clifton Avenue, Jesmond Avenue and further afield within Wembley Central Ward should have been considered holistically by the Council, these are matters between local residents and the schools and Brent Council and are not matters that I can consider in the context of this Order. Similarly, the denudation of enjoyment of existing open green areas and their replacement by formal sports pitches that may be floodlit are matters for the Council as local planning authority.
19. The objectors also raise the potential of this footpath to become a cycleway. Although it is clear that the new parts of the diverted path route would be able to accommodate joint use, the current northern section of the footpath is presently of inadequate width for this purpose. Such conversion would therefore require the existing path to be widened along its entire length but this would also be subject to separate Cycle Track Order procedures⁴. The objectors also oppose the provision of grass margins either side of the hard surfacing on the basis that it would be likely to cause an increase in incidences of litter and dog fouling. However, the grass margins in my view contribute to the attractiveness of public rights of way to many users whilst responsibility for maintenance of the public footpath in any event rests with the OMA.

Conclusion

20. Having considered the objections set out above, it is my view that the proposed diversion of H,G,F,E and D onto H, 1,2,3,4,5,6 to D and the improvements to the section marked point D to point 7 of the existing path would provide a reasonably safe, convenient and easier to use footpath. Having regard to the

² Design Manual for Roads and Bridges (HD 39/16) – Highways England

³ Revised guidelines for reducing mobility handicaps (RMH): towards a barrier-free environment – Institute of Highways and Transportation (1991)

⁴ The Cycle Tracks Act 1984 and The Cycle Track Regulations (see also Department of Transport Circular Roads 1/1986).

above reasons and all other matters raised, I conclude that it is expedient for the Order to be confirmed.

Formal Decision

21. The Order is confirmed.

Gareth W Thomas

INSPECTOR

Notes

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LEGEND

- Site Boundary
- Existing Route of Public Right of Way to be Altered (563m length from London Rd to High Rd)
- Relocated Route of Public Right of Way (568m length from London Rd to High Rd)
- Section of existing Public Right of Way to be improved
- Section of existing Public Right of Way unaffected by proposals

Description of diverted footpath

- At point H - 1, the width varying between 3.40 metres and 5.50 metres.
- At point 1 - 2, the width varying between 3.40 metres and 6.20 metres.
- At point 2 - 3, the width varying between 3.90 metres and 6.20 metres.
- At point 3 - 4, the width varying between 4.10 metres and 4.40 metres.
- At point 4 - 5, the width varying between 3.40 metres and 4.40 metres.
- At point 5 - 6, the width is 4.00 metres.
- At point 6 - D, the width varying between 3.50 metres and 4.00 metres.

Description of existing footpath NO.87 to be improved

- Between points D - 7 for a length of 45 metres, the width varying between 3.40 metres and 3.45 metres



MAP NOT TO
ORIGINAL SCALE

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First Floor
4-8 Emerson Street
Leamington
CV31 1JH



G 03.03.15 Revised to L20 comments
 E 03.03.15 Revised to L20 comments
 D 03.03.15 Revised to L20 comments
 C 20.02.15 Revised to L20 comments
 B 20.02.15 Revised to L20 comments
 A 20.02.15 Revised to L20 comments
 15.02.15 Prepared for July 2015 Planning team
 15.02.15

Revisions

Revised to L20 comments

• 03.03.15 Ark Elvin Academy, Brent (Drawing No. 105) - 10/03/2015
 • 03.03.15 Ark Elvin Academy, Brent (Drawing No. 105) - 10/03/2015

Project
Ark Elvin Academy, Brent
for Kier

Drawing
Public Right of Way Relocation Plan

Scale

1:2000 @ A3

Date

July '15

Client

nb/vh



pc

Drawing No.

D2308 L.105

Revision

G

☐ Planning
☐ Issued for Planning Approval
☐ Issued for Construction

☐ Issued for Design Information
☐ Issued for Tenders
☐ As Built

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