
Order Decision

Site visit made on 26 November 2015

by Susan Doran BA Hons MIPROW

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

Decision date: 08 DEC 2015

Order Ref: FPS/W2275/3/13

- This Order is made under Section 118 of the Highways Act 1980 and is known as The Kent County Council (Public Footpath AW158 (part), Charing) Public Path Extinguishment and Definitive Map and Statement Modification Order 2015.
- The Order is dated 26 January 2015 and proposes to extinguish the public right of way shown on the Order plan and described in the Order Schedule. The Order is also made under Section 53A(2) of the Wildlife and Countryside Act 1981. If confirmed, the Order would also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of that Act.
- There were two 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 subject to a modification set out below in the Formal Decision

Procedural Matters

1. Kent County Council ('the Council') points out that the Order route is described as running "west-south-west" from Pluckley Road to Footpath AW47, whereas it actually runs in an east-south-east direction. Its alignment is readily apparent from the Order plan, and I consider the error is a minor one that can be corrected by modification should I decide to confirm the Order. The Objectors, Charing Parish Council ('the Parish Council') and Charing Archaeological Group ('the CAG'), have no objection to the Order being so corrected, if confirmed.
2. I was unable to walk the line of the Order route at my unaccompanied site visit as it was obstructed at either end of Ray Wood by fencing, and its alignment between was wooded. However, I was able to view the path from public vantage points and I am satisfied I can reach a decision on the basis of my visit and the submissions from the parties.
3. In response to concerns raised by the CAG, the Council has confirmed in the documentation provided that the relevant statutory requirements were complied with as regards the Order. I am therefore satisfied that no further action is required on this point.

The Main Issues

4. The Order is made under Section 118 of the Highways Act 1980, the Council having concluded that this length of public footpath was not needed for public use. However, at the confirmation stage, I must be satisfied it is expedient to stop up the footpath proposed in the Order having regard to the extent that it appears that it 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 the land served by the path, taking into account provisions for compensation.

5. In reaching my decision, I am required to disregard any temporary circumstances preventing the use of the path when determining the likely use that might be made of it. In addition, a range of matters may be considered when addressing the expediency of stopping up the path.
6. Whilst I must also have regard to any material provisions contained in the Council's rights of way improvement plan, in this instance it says there are no matters relevant to the determination of this Order, and none have been raised by any other party to the Order.

Reasons

The extent to which it appears that the path would, apart from the Order, be likely to be used by the public

7. It seems that the Order route where it passes through the area marked Ray Wood on the Order plan, at Inwood House, has not been available for use for many years. The current owner has lived there for 15 years and speculates that it has not been used for 40 years, and perhaps not since the 1920s, although he does not explain why he thinks this. It was not until 2012 when the local Ramblers' representative surveyed the path that the Council says it became aware that it was obstructed. It was this that prompted the application for the Order.
8. The CAG remarks that the route was obstructed by rabbit netting in the mid-1970s by a previous owner of Inwood House. Following an incident at the property, and not wishing to cause fuss to the landowner, it was no problem for walkers to divert to the north of the fence line. Indeed, members of the CAG have walked a metre or two to the north of the fence, accessing or egressing at Pluckley Road through a gap in the hedge (above point A on the Order plan). It is not clear how frequently such use of an alternative route through the adjoining field has been made either by CAG members or indeed by other members of the public. I did not see an easily negotiated access/egress point at Pluckley Road on my site visit, and gaps in the hedge were fenced.
9. The Applicant says he has not seen walkers to the north of the fence, although I consider the woodland may prevent them being easily observed from within his property. Nor does it seem that anyone sought to use the Order route following changes in ownership of the property. I agree though with the Council, that there is no evidence on the ground of another route in use running parallel with, but to the north of, the definitive line. Having said that, at my site visit there was little if any evidence by way of wear lines of the alternative public footpaths that the Council and Applicant state are easier and more enjoyable for walkers to use. This and the lack of other members of the public coming forward to say they use the Order route, or at least an alternative to it as described above, suggests to me that there would not be a high volume of walkers likely to use the Order route. I further note that the local Ramblers' group supports the Order.
10. The Applicant believes that most walkers come from Charing to the north or Leacon Lane to the south and have no need to use the Order route. If my

understanding of the submissions is correct, it is a combination of paths AW43 and AW47, to the north and south of the Order route, that are considered the favoured routes. I agree that these serve the same purpose as the Order route, meet the same highway, and are only a short distance away. Another path, AW48 (not shown on the Order plan) lies to the south of the Order route which can be used in conjunction with AW47, but as the CAG points out would require walkers to follow Pluckley Road for 500 metres or so to reach AW43, or further to reach AW37 to the north, were the Order route to be extinguished, a point I return to below.

11. The Council argues that the Order route leads nowhere. However, it does as the CAG comments lead to Pluckley Road, which I consider is a place the public would wish to reach to continue an onward journey using other public rights of way connecting with the road. There is though, no immediate onward connecting public right of way to the west, and paths to the north and south require users to follow Pluckley Road for varying distances. To the west, the CAG says there is a field on which plots are being sold as an investment with a view to future development. Therefore, the Order route would provide a direct link for future home owners to walk to the recreation ground at Charing, or the railway station, via the Order route and connecting paths to the north and east. However, there is no planning permission for the development of this land; indeed the CAG says none has yet been applied for, so I am unable to attach weight to this as a reason for likely use of the Order route as it is not known whether or not this will happen at all. Mention is also made of the route providing the quickest route to a house and an office complex to the south east of point B. However, as private facilities, neither of these is a place to which, in my view, the public would wish to resort.
12. The Council says the footpath was added to the Definitive Map and Statement following a Review in 1970, but the basis for this is unknown. The CAG, however, provides detailed analysis of documentary evidence concerning the history of the route, dating back to the 13th Century. Their research indicates for the most part it was a lane forming a boundary of the former Ray Wood Common. As an historic way they argue it is a 'Heritage Asset'. Many public rights of way, however, have their origins in history, and although the information provided by the CAG is of interest, there is nothing to suggest that I should place significant weight on the path's antiquity such that it would not be expedient to confirm the Order.
13. The termination of the route on Pluckley Road is raised in the submissions, and it is suggested that safety is an issue. Pluckley Road at this location is subject to the national speed limit. Where the Order route meets it at point A, the road is essentially straight, with a slight rise towards Inwood House. There is no separate footway, and limited verge width to provide refuge for walkers. Vehicles are said to travel at or in excess of the speed limit, with the CAG quoting an average speed of 51.7mph. The road is said to be busy, and appeared well used at the time of my site visit. Clearly it depends on where people are walking to/from as regards how much of the road they will need to use. It is possible that a walker might chose to walk south from point A and return along AW47 to point B and back to Charing via AW158, but I accept that to go north, the Order route would require walkers to travel for a longer distance along the road, than would be the case if using AW43 and AW47 together. I agree with the Parish Council this is not reason in itself to warrant extinguishment; as they point out, many routes terminate on roads in the

same circumstances. Indeed, the Stour Valley Walk and Greensand Way terminate on this road. Nevertheless, it is a matter to weigh in the balance when considering likely use of this path, although the weight I attach is limited.

14. The Parish Council remarks that paths have already been lost to the M20 motorway and HS1 rail developments. However, neither affects the Order route, and I do not attach weight to this argument.
15. Bearing in mind the above, I consider that the Objectors' argument that people use an alternative parallel route avoiding the obstructed Order route is not supported by evidence of substance. If the Order were not made, I consider that likely use of the Order route by the public would be slight. In addition, I agree with the Council that there are suitable alternative routes nearby.

The effects which the extinguishment would have as respects land served by the path, account being taken of the provisions as to compensation

16. The Council has identified no negative impact on the land as a result of the Order. Both the Applicant over whose land the majority of the Order route passes, and the adjoining landowner whose land at point B is affected, support the Order¹. No issues concerning compensation have been raised.

Conclusions

17. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed with a modification, described in paragraph 1, which does not require advertising.

Formal Decision

18. The Order is confirmed subject to the following modification:

- In Part I of the Schedule to the Order, amend the description of the route to be extinguished by replacing "west-south-west" in the third line with "east-south-east"

S Doran

Inspector

¹ The support of the adjoining landowner has, I understand, been given verbally

