



Order Decisions

Site visit carried out on 22 October 2015

by Peter Millman BA

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

Decision date: 5 November 2015

Order Ref: FPS/M2460/6/9 ("Order A")

- This Order is made under Section 26 of the Highways Act 1980 ("the 1980 Act") and is known as the Leicestershire County Council (Public Footpath F76 (part), Bottesford) Public Path Creation Order 2014.
- The Order is dated 18 September 2014 and proposes to create a footpath as shown on the Order Map and described in the Order Schedule.
- There were no objections outstanding when Leicestershire County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order.

Order Ref: FPS/M2460/3/5 ("Order B")

- This Order is made under Section 118 of the 1980 Act and is known as the Leicestershire County Council (Public Footpath F76 (parts) Bottesford) Public Path Extinguishment Order 2014.
- The Order is dated 18 September 2014 and proposes to extinguish footpaths as shown on the Order Map and described in the Order Schedule.
- There were seven objections outstanding when Leicestershire County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have confirmed the Order.

Main issues – Order A

1. Before the Order can be confirmed, Section 26 of the 1980 Act requires that I must be satisfied that there is a need for the footpath, and that it is expedient to create it. In deciding whether it is expedient I must have regard to the extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public, or the convenience of persons resident in the area. I must also have regard to the effect which the creation of the footpath would have on the rights of persons interested in the land over which it is proposed to create it. But in having regard to that issue, I must take into account the provisions as to compensation in Section 28 of the above Act. I must additionally consider any material provision of a rights of way improvement plan prepared by the County Council.

Main Issues – Order B

2. Section 118 of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient to stop up the footpaths having regard to the extent (if any) to which it appears to me that they would, apart from the Order, be likely to be used by the public. I must also have regard to the effect

the extinguishment of the footpaths would have as respects the land served by them.

3. When considering likely use I must disregard temporary obstructions to the current paths.

Reasons

Background

4. Before 1965 a public footpath led in a fairly direct line from Albert Street in Bottesford, opposite its junction with Chapel Street, north-westwards to the northern end of Pinfold Lane. It had one corner, which was positioned roughly where point D is shown on the map attached to the end of this decision. It did not reach the river bank at any point. The footpath, as it was then, would have passed through the house at 18 Riverside Walk, before turning at D and passing through the house at 26 Pinfold Lane. In 1965 the Minister of Transport made an Order to divert the section of this path north-east of D onto the line currently shown as D-E. This was to enable development, for which planning permission had been given, to take place.
5. So after 1965, a footpath led, as before, in a straight line from Albert Street to point D, from where it turned at a very sharp angle almost southwards, before turning again at right-angles and continuing to Pinfold Lane.
6. In 1982 Melton Borough Council made an order to divert the remaining straight part of this footpath to enable the development of Riverside Walk. The path was diverted onto a route running along the bank of the River Devon. It seems likely that it was intended that this riverside path would link to point D, rather than ending at C, but the plan attached to the order clearly shows C as the end point of the diversion.
7. The error (assuming that is what it was) appears not to have been noticed at the time, so when the County Council subsequently modified its Definitive Map to show the effect of the 1982 diversion the result was that there was a gap between C and D, across which the modified Definitive Map showed no public right of way existing. It shows two dead-end routes, between A and C and between E and D. One thing that is clear, however, is that there has never been a public right of way running in a direct line from C to D. A number of objections to the Extinguishment Order are based on the misapprehension that there was, at one time, such a through route. This misapprehension seems to have been reinforced by the fact that Ordnance Survey maps, because of their relatively small scale, appear to show a through route.
8. The developer who built the houses on Riverside Walk left a passageway (A-B) between nos. 16 and 17 to connect the end of Riverside Walk to the diverted path along the river bank (paragraph 6 above). This has never been expressly dedicated as a public right of way.
9. The County Council made the Creation Order, Order A, so that the passageway could be recorded on its Definitive Map as a public footpath, and the Extinguishment Order, Order B, so that the two dead-end paths, D to E and A to C, would no longer be recorded as public footpaths.
10. Seven objections were made to these Orders. Some were made jointly to both Orders, but it is clear that there was no real objection to Order A.

Order A

11. It is not disputed that there is a need for a footpath between A and B. It is clearly well-used.
12. I have seen no evidence of any adverse effect on the rights of persons interested in the land over which public rights between A and B are intended to be created.
13. I conclude that it is expedient that a right of way, shown between A and B on the Order map, be created.

Order B

14. A-C is completely blocked at A, and D-E is obstructed at E, though it is possible to pass the obstruction. However, I must ignore these temporary obstructions (paragraph 3 above). In any event, however, I do not consider that these paths would be used to any significant extent were they available. They are both culs-de-sac and lead nowhere.
15. The extinguishment of the paths would have no adverse effect on the land served by them.
16. I conclude that neither path is needed and that it is expedient to confirm Order B.

Conclusion

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

Other matters

18. It is understandable that some objectors, and the Parish Council, want to keep the cul-de-sac routes open, in the hope that eventually a linking path between C and D might be created. However, I accept the County Council's reasoned view that this is very unlikely. It is equally understandable that some people feel aggrieved that property owners are seen to benefit from mistakes made by the Borough Council in the 1980s, but this and similar objections cannot be given significant weight in deciding whether the Orders should be confirmed.

Formal Decision – Order A

19. I confirm Order A.

Formal Decision – Order B

20. I confirm Order B.

Peter Millman

Inspector

