



Order Decision

Site visit made on 28 July 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 25 August 2016

Order Ref: FPS/D0840/3/6

- This Order is made under Section 118 of the Highways Act 1980 and is known as The Cornwall Council (Footpath No. 20, St Austell) (Formerly Footpath No. 27, St Austell Unparished Area) (Tregonissey Road to Slades Road) (Part)¹ Public Path Extinguishment Order 2015.
- The Order is dated 29 September 2015 and proposes to extinguish the public footpath running generally east – west between Tregonissey Road and Slades Road, St Austell.
- There were two objections outstanding when Cornwall 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 modifications set out in the Formal Decision.

Procedural Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.

Main Issues

2. The Order is made because it appears to Cornwall Council, the order-making authority ("the OMA") that the footpath is not needed for public use. Section 118 of the Highways Act 1980 ("the 1980 Act") requires that, before confirming the Order, I must be satisfied that it is expedient to stop up the footpath as proposed in the Order having regard to;
 - (i) the extent to which it appears that the footpath in question would, apart from the Order, be likely to be used by the public; and
 - (ii) the effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.
3. Section 118(6) of the 1980 Act requires that I disregard any temporary circumstances preventing or diminishing use of the path in question when determining the likely use that might be made of it.
4. The Ramblers Association (Restormel Group) ("the RA") raised concerns about extinguishment of parts of the route. They argued that extinguishment in relation to the route as recorded on the Definitive Map and Statement ("the DMS") DMS would remove the rights of the public to use those sections on foot, even though they were also recorded in part on the List of Streets ("the LOS").

¹ Following modification of the Order

5. The other objection, and similar matters raised at a later date by interested parties, appeared to be made on the misunderstanding that the intention was to prevent use of the existing estate footpath leading to and from point B, Slades Road. The statutory objection was withdrawn following the submission of the Order to the Secretary of State.
6. The OMA confirmed that there was no intention to prevent use of the routes on the ground but they were seeking a pragmatic approach to dealing with an historic situation. However, it was accepted that it may be the case that the rights on foot, as recorded on the LOS, would be extinguished. The OMA continued to support confirmation of the Order as made but suggested a potential modification to deal with this point, should I consider it necessary.
7. I am required to have regard to the material provision of a rights of way improvement plan ("ROWIP") prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way. The OMA submitted part of the Cornwall Countryside Access Strategy 2007, which incorporates their ROWIP.

Reasons

Background

8. The DMS, relevant date 15 September 2006, records a public footpath, numbered 27, which is now Footpath 20, as "FP from Tregonissey Road to Slades Road" with an average width of 5'0" *Metalled*. This route, of approximately 1.5 metres width, is shown by the solid black line A – B on the Order map. As can be seen on the Order map this route is partly coincident with Thornpark Road, recorded as unclassified road U 6107 on the LOS, with pavements, or footways, on either side of the carriageway. The Order route is also partly coincident with the estate footpath, recorded as F 7107 on the LOS.
9. However, parts of the route affect the dwellings and curtilages of numbers 31, 47, 49, 57 and 59 Thornpark Road, 26, Slades Road and an electricity substation. I understand that this estate was originally local authority housing built in the 1970s. I do not have a copy of any earlier DMS but the OMA refer to the route originally being an unenclosed headland path and so it appears to have been recorded before the current properties were built. Unfortunately, the location of the footpath has now affected the sale of at least number 47 Thornpark Road. The OMA indicate that they seek to resolve a problem created by the lack of an Order at the appropriate time under the Town and Country Planning Act legislation to allow the permitted development to take place.

The current recording of the route

10. I agree with the OMA that extinguishment under the 1980 Act is the appropriate way forward in this particular situation. However, the RA raise a technicality on which I need to be satisfied as to the best solution.
11. Section 56 of the Wildlife and Countryside Act 1981 sets out that the DMS *"...shall be conclusive evidence as to the particulars contained therein to the following extent, namely—*
where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had thereover a right of way on foot...

...where by virtue of the foregoing paragraphs the map is conclusive evidence, as at any date, as to a highway shown thereon, any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions..."

12. Section 36 of the 1980 Act refers to *Highways maintainable at public expense* and is the part of the Act from which the LOS arises. The issue put forward by the RA was that removal of the footpath from the DMS would remove the legal rights of pedestrians to pass over that area. Taking account of section 36(4) of the 1980 Act I consider that the RA has a fair point. Confirmation of this Order would appear to be an "...event... [by] which...a highway would...cease to be, maintainable by the inhabitants at large of any area,... [and so] the highway shall...cease to be, a highway which for the purposes of this Act is a highway maintainable at the public expense." The point of Section 118 is that the route ceases to be a highway.
13. Although these seem to be academic arguments, which do not appear to have been tested in the courts, I accept that there is some logic in only extinguishing those sections required. However, I am satisfied that section 118 of the 1980 Act does not affect public carriageways, howsoever recorded, and so there is no need to take account of the potential effect of the Order on Thornpark Road itself. I am also satisfied that those sections of the estate footpath beyond the approximately 1.5 metre (5 foot) width of the footpath recorded on the DMS would not be affected.
14. The OMA are correct in their argument that the legislation is intended to allow the nomination of certain rights of way to avoid extinguishment under the 'cut-off date' of 2026, introduced by the Countryside and Rights of Way Act 2000. However, bearing in mind the difficulties that can arise from administrative errors I consider it better to deal with the matter in the Order now before me.
15. I am not satisfied that the modification suggested by the OMA, to which the RA raised no objection, would deal with the entirety of the route affecting private property. I intend to modify the Order to deal with additional sections.

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

16. In relation to those sections of the Order route which are also recorded on the LOS, I consider that they would be likely to be used by the public. The carriageway sections of Thornpark Road will be less used on foot generally, although as a residential estate there will be use crossing to and from the various properties. However, I bear in mind that the carriageway is unaffected by this Order and so remains available.
17. Under section 118(6) of the 1980 Act I must ignore the temporary circumstances preventing the use of the Order route. Houses would be viewed as temporary circumstances in such a case. In relation to the sections passing through properties this provides a 'straight-line' access between the roads, which may be preferable to some, if seeking to walk across the estate. However, there are also alternative routes on existing estate roads, paths and

land to the north and south of the footpath. If the houses were not present then these sections of the footpath may be used to some extent.

18. I consider that the level of concern raised about the potential loss of the estate footpath to Slades Road demonstrates the high level of use for access to and from the estate, to the bus-stop and local services. However, given the existence of the estate footpath, which is a made and maintained path running generally parallel with the eastern end of the Order route, I consider that the section passing through 26 Slades Road and the electricity substation would be unlikely to be used, even if open.

The effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.

19. The land over which the footpath passes would remain part of the relevant properties and highways. There is no indication of any land served by the footpath which would not be adequately served by the alternatives.

Expediency

20. The issue as to whether or not it is expedient to confirm the Order means that I can take account of wider considerations. It is clear that confirmation of the Order, in relation to the properties which have subsequently been built, would be expedient so far as those property owners are concerned, removing the stress and potential financial burden placed on them. It would also be expedient for the OMA as a pragmatic solution to the problem. The RA does not object to the principle of resolution for the landowners, which was not a problem of their making. The proposal aligns with the ROWIP.
21. Taking account of all the factors I consider that it is expedient to confirm the Order to extinguish those sections of footpath passing through properties and over any sections of carriageway on the LOS. There is no requirement for readvertisement of the Order under Schedule 6 to the 1980 Act for such a modification. As a result, I am satisfied that no further delay arises for the property owners and the, potentially academic, concerns can be dealt with.

Conclusions

22. Having regard to these, and all other matters raised in written representations, I conclude that the Order should be confirmed subject to modifications to extinguish the sections passing through private property and to not extinguish those sections coincident with the estate footpath recorded on the LOS.

Other matters

23. Issues raised regarding the approach of the OMA toward highway recording generally, in relation to the DMS and LOS, are not relevant to my decision and I have not taken them into account.

Formal Decision

24. I confirm the Order subject to the following modifications:

- In the Order title:
 - after text "... (*TREGONISSEY ROAD TO SLADES ROAD*)..." add text "... (*PART*)..."

- In the Schedule to the Order:
 - delete paragraph relating to the *"DESCRIPTION OF SITE OF PATH OR WAY TO BE EXTINGUISHED"* and add text *"Those lengths of Public Footpath Number 20 in the Parish of St Austell (that is shown as Public Footpath Number 27 on the Definitive Map for the St Austell Unparished Area with a relevant date of 15 September 2006) commencing at a point where it has a junction with the eastern margin of publicly maintained road number C 0281 "Tregonissey Road" approximately 23 metres north-west of the property number 2, Thornpark Road at Ordnance Survey Grid Reference (OSGR) SX 0217/5341 shown as Point "A" on the attached map thence running in a generally easterly direction for a distance of approximately 114 metres to a point where it has a junction with that part of Footpath number 20 to be retained, approximately 10 metres north-north-east of the property number 57, Thornpark Road at OSGR SX 0228/5339 shown as Point "V" on the attached map;*
and, that part of Footpath 20 affecting 59 Thornpark Road between OSGR SX 0229/5340, Point "W" and OSGR SX 0231/5340, Point "X" on the attached map;
and, that part of Footpath 20 affecting the property 26 Slades Road and the electricity substation between OSGR SX 0232/5340, Point "Y" and OSGR SX 0234/5340, Point "Z" on the attached map where it has a junction with that part of Footpath 20 to be retained, approximately 4 metres west of the junction with the western margin of the publicly maintained road number C 0768 "Slades Road" at OSGR SX 0235/5339 shown as Point "B" on the attached map.
For the avoidance of doubt those sections, including any part widths, coincident with the route recorded as Estate Footpath F 7107 on the List of Streets, held and maintained by the Council under section 36 of the Highways Act 1980 are not extinguished by this Order. All other lengths and widths of Public Footpath Number 20 in the Parish of St Austell, recorded as Public Footpath Number 27 on the Definitive Map for the St Austell Unparished Area with a relevant date of 15 September 2006, are extinguished by this Order."
- On the Order Map:
 - after text *"...(TREGONISSEY ROAD TO SLADES ROAD)..."* add text *"...(PART)..."*;
 - add text to show points V - Z;
 - show the sections to be extinguished in the key, removing reference to section A - B;
 - show the sections to remain in the key as a continuous line with short bars at intervals;
 - modify the Order line to show those sections to be extinguished (A - V, W - X and Y - Z) and to remain (V - W, X - Y and Z - B).

Heidi Cruickshank

Inspector

202200

202300

THE CORNWALL COUNCIL (FOOTPATH
No. 20, ST AUSTELL) (FORMERLY FOOTPATH
No. 27, ST AUSTELL UNPARISHED AREA)
(TREGONISSEY ROAD TO SLADES ROAD) (PART)
PUBLIC PATH EXTINGUISHMENT ORDER 2015

Road C 0281
"Tregonissey Road"

Road C 0768
"Slades Road"

Road U 6107
"Thornpark Road"

Estate Footpath F 7107

Footpath St Austell 20
to be Extinguished

OS SHEET SX 02/53

KEY

Scale: 1:1,250

Footpath to remain:
Footpath to be Extinguished:

"A" to "B"

"W" to "X"

"Y" to "Z"

The fact that this map does not show a Public Right of Way does not mean that such rights may not be the subject of a current claim or claimed and proved sometime in the future.

This plan has been produced specifically to supply an individual with value added Local Authority information. It remains the property of Cornwall Council and must not be copied.

This map has been produced by transposing the Rights of Way from the Definitive Map. The precise line of a right of way can only be determined by reference to the Definitive Map.

Cornwall Council cannot accept responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map.

© Crown copyright and database rights 2015
Ordnance Survey 100049047