



Order Decision

Site visit carried out on 11 November 2016

by Peter Millman BA

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

Decision date: 21 December 2016

Order Ref: FPS/Z1585/4/31

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Essex County Council Highways Act 1980 – Section 119 – Public Path Diversion Order Footpath 62 Felsted.
- The Order is dated 6 November 2015 and proposes to divert a footpath as shown on the Order Map and described in the Order Schedule.
- There were sixteen objections outstanding when Essex County Council submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I have not confirmed the Order.

Main issues

1. The Order was made by the County Council because it appeared to it to be in the interests of the owner of the land crossed by the footpath to divert it. Section 119(6) of the 1980 Act requires that, before confirming the Order, I am satisfied that it is expedient in the interest of the owner, or of the public, or both, that the path should be diverted. The further tests for confirmation are set out in the remainder of s119(6) and in s119(6A) of the 1980 Act. The principal additional issues in this case are, first, whether the diverted footpath would be substantially less convenient to the public than the present one, second, what effect the proposed diversion would have on public enjoyment of the path as a whole and third, the effect of the proposed diversion on the land served by the existing right of way and on the land over which the new right of way would be created and any land held with it.

Reasons

Background

2. Footpath 62 starts from the centre of Felsted and runs in a south-easterly direction, parallel to and about 60 metres south-west of Chelmsford Road. After roughly 500 metres it is joined by footpath 61 which leads to it from the south-west. 150 metres further on footpath 62 turns sharply to the north-east to run along a grass track next to a property called Beazleys to join Chelmsford Road. The proposed diversion would be, in effect, a continuation of footpath 61 to Chelmsford Road, while footpath 62 south-east of its junction with footpath 61 would be extinguished. The current line of the path and the proposed diversion are shown on the map attached at the end of this decision.

The tests for confirmation

The landowner's or the public's interest

3. The owner of the land crossed by the current and proposed routes is Gordon Crawford Farms. The application for the order, made by a partner, Mr I Crawford, stated, under 'Reasons for the diversion of the path': *The termination points of the diversion are not substantially less convenient to the public. The length of the diversion is not substantially different to the existing route. The application is in the interests of the owner and occupier of the land.* This document provides no information about why the diversion would be in either the landowner's or the public's interest.
4. The County Council's statement of the grounds on which it considers the Order should be confirmed stated under the heading 'Whether it was expedient to make such an Order in the interests of the landowner': *The current definitive Footpath runs across land owned by the applicant.* This document provides no information about why, or even whether, the diversion would be in either the landowner's or the public's interest.
5. A letter sent by the County Council to consultees in November 2015 stated: *The landowner proposes to divert footpath 62 at the request of some of the local community in that area. If confirmed he is prepared to upgrade this path to a Bridleway.* This letter, although suggesting that the proposed diversion is intended to be in the interest of the public, provides no basis for concluding that it actually is.
6. Paragraph 8 of the landowner's statement of case stated: *The Essex County Council Order clearly states that the proposal is in the interests of the landowner.* It adds further: *Therefore, where objectors have stated that the proposed diversions are in the landowner's interest, they are simply reaffirming our legal right as landowners to seek permission for such diversions.* It is not sufficient, in my view, for a landowner to assert that it is in his interests to divert a path without giving the reasons for the assertion.
7. Paragraph 2 of the landowner's statement of case stated that there were two basic reasons for its application for the Order. One of these was: *we became fully aware of the draft proposal to create a linked Bridleway Ring around the village in December 2014. In light of our past experiences in this location we as landowner would not have been happy to support the potential upgrading of this footpath to a bridleway in its current location. However, we would support such a proposal if footpath 62 were to be diverted, as proposed.*
8. The landowner also referred to the Bridleway Ring in his comments on the objections: *the proposal is both in the interest of the landowner and the wider community and could assist in the realisation of the Bridleway Ring idea that is being championed by Felsted Parish Council.*
9. It is clear from other documents supplied that the 'Bridleway Ring' is a plan, supported by Felsted Parish Council, to create a route of bridleway status around Felsted, and that it would involve the dedication of new bridleway rights and/or the upgrading of footpaths to bridleways. Although I have been provided with no information about where the Bridleway Ring is intended to run, it seems certain that it would, if created, pass over land in the ownership of Gordon Crawford Farms and probably over A-D if the Order were to be confirmed. Some objectors seem to have interpreted the comment that the Bridleway Ring proposal would only be supported if footpath 62 were diverted

as a veiled threat: 'if you object successfully to the diversion you won't get your bridleway ring'. No threat may be intended, but it seems reasonable to summarise the stance of the applicant in this way: the diversion of footpath 62 is a prerequisite for achieving a ring of public bridleways around Felsted.

10. It is possible that if the Order were to be confirmed, the applicant and the other landowners involved in the Bridleway Ring project would dedicate public bridleway rights so that it could be achieved. But it does not follow that it would be in the public interest to divert footpath 62, and in particular those members of the public who currently walk along the footpath.
11. At paragraph 2 of the statement of case (see paragraph 7 above) the applicant gave the second reason for applying for the Order, which was: *we had been approached by a family friend who was concerned that his property (Long Meadow) [shown on the map below to the south-east of B-C] had been the victim of crime, as had others nearby, because walkers regularly strayed from the route A to B of footpath 62 and wandered behind the gardens of their houses. He considered that this provided 'cover' for the criminal element to view his property from the rear by claiming to be genuine 'lost' walkers. He explains that: the granting of this diversion proposal will make it easier to prevent these criminal acts [of trespass to the field south of point A]. If this footpath is successfully diverted to the corner of this arable field, we would be able to securely fence off the boundary of this Right of Way from the remainder of the arable field and restrict accidental trespass without affecting our existing field access.*
12. It therefore seems that the applicant believes that it would be in the interest of the owner of Long Meadow (and perhaps other neighbouring houses) to divert footpath 62 with the aim of making it more difficult for intending burglars and others to get to the rear of those properties. It does not follow from this that it is expedient to divert the path in either the landowner's interests or the interests of the public.
13. Having considered the material mentioned in paragraphs 3 to 12 above I could see nothing from which it might have been concluded that it was expedient in the interests of the landowner to divert footpath 62 as proposed. There was no indication of what benefit, if any, diversion would bring to the landowner. Likewise it could not be concluded that it was expedient in the public's interest to divert footpath 62 as proposed.
14. It seemed to me unlikely, however, that Gordon Crawford Farms would have been prepared to go to the trouble and expense of applying for a diversion order unless it was believed that there would be some benefit for it. I therefore asked for a letter to be sent to all parties inviting further comments on this aspect of the test for confirmation. I asked for it to be noted that the mere assertion that it was expedient in the interests of the landowner, or the public, to divert the path was insufficient in the absence of reasons for making such an assertion. There were a number of responses to the letter.
15. The County Council's response was, first, that: *The diversion is in the interest of the landowner, who will no doubt re-submit his reasons for the diversion.* It might have been expected that, since the County Council stated, in the Order, that it appeared to it to be in the interests of the landowner to divert the path, it would have been able to explain why that was the case. Its response is not helpful. The County Council then went on to add that it was now of the opinion *that the diversion is in the interest of the public in as much as the new route is*

more convenient for the public. This was because the proposed diversion was shorter than the existing path.

16. I have seen no evidence that any member of the public asked the County Council to shorten the route of the footpath. I have seen no evidence that the route is used as a short-cut or that it would provide any benefit to the public by being shorter. I have seen no letter or statement from any member of the public supporting the Order or supporting the view that it is the public's interest to divert the footpath.
17. Three of the more than 20 people who had previously objected to the Order (there were 16 objections, but some were from couples) wrote in response to the letter. All reiterated their objection to the proposed diversion.
18. The landowner provided a detailed response to the letter. Mr Crawford stated that since the Order had been submitted a local resident had asked if he could graze two of his horses on a piece of land to the south and west of point B (see plan below). This resident would have pedestrian and vehicular access to the land via B-C. If this piece of land was used for grazing it would discourage trespass to the land behind properties on Chelmsford Road (see paragraph 11 above). However, the use of B-C for vehicular access might have an adverse effect on the 'walking experience' on B-C.
19. How allowing vehicular access for one person over B-C would affect the public's walking experience is not explained. Given that there is no evidence that the request to graze has been granted, however, it cannot be concluded that there would be any adverse effect and that it would therefore be in the public interest to divert the path.
20. The landowner stated next that it supported the comments of the County Council as to the benefit to the public of shortening the route. I expressed my view of those comments at paragraph 16 above.
21. The landowner then stated: *should this diversion not be granted, the landowner will continue to be adversely affected by the financial loss resulting from acts of trespass which damage growing crops, cause damage to his machinery due to littering, plus the cleanup costs associated with fly tipping and the impact all these have on his enjoyment of his land.* He had not previously mentioned such problems. It is not clear from this statement how these acts of trespass are related to footpath 62, where they occur and whether the trespassers who fly tip and cause other damage access the land via the section of footpath proposed to be diverted. For these reasons I cannot give this evidence significant weight.
22. It has not been shown to be expedient in the interest of the public to divert footpath 62 as proposed. The County Council has chosen not to divulge why it appeared to it to be in the interest of the landowner to divert the path. The landowner has advanced some reasoning. It was stated in November 2015 (paragraph 5 above) that the proposal to divert was made at the instigation of 'some of the local community'. It was stated around that time that the diversion was to facilitate the creation of the Bridleway Ring (paragraphs 7 and 8 above). It was said in the landowner's statement of case (paragraph 11 above) that the diversion was applied for because it was in the interests of the owner of Long Meadow. It is now argued that the diversion would prevent acts of trespass and damage, although it is not clear where these have occurred and whether they would not have occurred had the path been diverted. The lack of

detail and lack of consistency mean that I cannot be satisfied that it is expedient in the interests of the landowner to divert the path.

23. I conclude that the first test (paragraph 1 above) is failed and that the Order cannot therefore be confirmed. Although there is no need for me to continue to a consideration of the further tests for confirmation, I shall do so briefly for the sake of completeness.

Whether the diverted path would be substantially less convenient to the public than the current one

24. The County Council's statement of grounds states merely: *The distance from A to C via B is about the same as the distance from A to C via D [see map below]. However, if the public wish to travel north up the highway the distance is somewhat shorter on the new proposed route.*

25. In terms of surface, gradient, width and ease of use, i.e. factors which relate to convenience, it seems to me that there is little to choose between the current and proposed routes.

The effect of the proposed diversion on public enjoyment of the path as a whole

26. The County Council's comment on this aspect of the test in its statement of grounds is very short: *There is very little difference in the amenity between the old and new route.*

27. The relevant objections to the Order, i.e. excluding, for example, those which express the fear that the diversion might be a precursor to future development in the area, relate to the enjoyment of the path that might be lost if it were diverted, and if it were to become a bridleway. It is said, for example, that diversion would take away views towards the valley [of the River Chelmer]. I noted on my site visit that the extensive, if not spectacular, views to the south-west that are available from between A and B would be lost if the path was diverted.

28. It seems to me that there would be some, albeit fairly small, loss of enjoyment to the public if the path were diverted. If it were necessary to balance that loss against any benefit to the landowner, it might well have been possible, had he, perhaps aided by the County Council, explained in more detail and with some consistency how the diversion would serve his interests, but as it is there is no need to carry out that balancing exercise.

The effect the Order would have on other land served by the existing right of way and on the land over which the new way would be created and any land held with it

29. It appears that all the land is in the ownership of Gordon Crawford Farms and that there would be no effect.

Conclusion

30. Having regard to these and all other matters raised in the written representations I conclude that the Order should not be confirmed.

Formal Decision

31. I do not confirm the Order.

Peter Millman

Inspector

