

Penderfyniad ar y Gorchymyn

Ymweliad â safle a wnaed ar 28/09/16

gan Helen Slade MA FIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 11/10/16

Order Decision

Site visit made on 28/09/16

by Helen Slade MA FIPROW

an Inspector appointed by the Welsh Ministers

Date: 11/10/16

Order Ref: Z6950/W/16/516182

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as The Vale of Glamorgan Council (Public Footpath No 12 St. Brides-super-Ely) Public Path Diversion Order 2015.
- The Vale of Glamorgan Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 6 August 2015 and there is one objection outstanding.
- The Order proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. I made an unaccompanied site visit to the area when I was able to walk the existing line of the path and the new route proposed in the Order.
2. In this particular case, the sole objector claims that there are a number of procedural irregularities in relation to the making and publicising of the Order which render it fatally flawed and thus invalid. I need to address these issues before I am able to decide whether or not I can proceed to determine the Order itself.

Alleged Procedural Irregularities

Sealing and signing the Order

3. The objector, Mrs K Gallimore, considers that the Order is not signed and sealed 'at the end' in accordance with the requirements of the relevant regulations¹.
4. The seal and the signature are set at the end of the Order, and before the cover sheet. The format is not unusual in any way for orders of this kind. The Vale of Glamorgan Council ('the Council') is satisfied that the form of the Order is correct, and so am I.

¹ Statutory Instrument 1993 No. 11 Highways, England and Wales - The Public Path Orders Regulations 1993 ('the 1993 Regulations')

The citation

5. Mrs Gallimore considers that the Order citation is incomplete as it does not include the clause which relates to the consultations undertaken with other councils. She has not identified which particular other council she considers ought to have been consulted. The Council states that no other council, as defined in Section 329 of the 1980 Act, is affected by the Order.
6. I am satisfied that the particular clause referred to by Mrs Gallimore is an optional clause. It is presented in square brackets in the 1993 Regulations, indicating that it can be included, or not, as appropriate. If no other council is affected by an order, the inclusion of the clause is not required. In the absence of any indication that another relevant council has been affected in this case, I am satisfied that the Order is not fatally flawed in this respect.

The incorrect order procedure has been adopted

7. The objector suggests that the Order should have been made under the provisions of the Town and Country Planning Act 1990 ('the 1990 Act') rather than by way of Section 119 of the 1980 Act.
8. The Council states that no planning application has been made which would necessitate the diversion of the footpath and I have been presented with no evidence to gainsay this. In any case, it is a matter for the Order Making Authority to decide which procedure is the most relevant and make its case accordingly. I am satisfied that I can determine this Order on the basis on which it has been made.

Inaccuracy in the Notice of the Order

9. Mrs Gallimore points out that the Notice advertising the Order invited objections and representations to be sent to the Director of Development Services - a post which no longer existed at the time of the advertisement. The Council acknowledges this to be the case, due to a restructuring of the Council earlier in the year. However the Council states that at all times measures were in place to ensure that correspondence sent to the earlier post title was redirected to the correct recipient.
10. Since Mrs Gallimore's objection was clearly received and acted upon correctly by the Council I have no evidence to suggest that measures for allocating correspondence correctly were not in place, and no reason to conclude that the administrative change led to any prejudice to any party. Whilst it may have been a little slipshod not to have ensured that the advertisement had been updated to include reference to the new Head of Service, I do not consider that it fatally undermines the Order.

Lack of publicity on the Planning Inspectorate and the Council's websites

11. Mrs Gallimore bemoans the lack of advertising and the non-availability of the Order documentation on-line at both The Planning Inspectorate website and the Council's own website. She considers that this is contrary to Regulation 4 of the Environmental Information Regulations 2004 and questions how the public can be fully involved in the process if they do not know that the documentation exists or where it is available for inspection.
12. Whilst I appreciate that on-line availability of documents can be helpful, the legislation governing these types of procedure was designed to ensure that the members of the public most likely to be affected by any such proposals, together with their national and local representatives (both official and voluntary) are made aware of the Order

and given time to respond to it. Clearly, any additional publicity or consultation cannot be detrimental, but it is not a legal requirement.

13. I am satisfied that all procedural matters have been correctly undertaken, and that I can proceed to determine the Order on its merits and in accordance with the relevant legislation under which it was made.

The Main Issues

14. With regard to the proposed diversion of the path, Section 119(1) of the 1980 Act states that an order can be made where it is considered by the authority that it is expedient in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, that the line of the path in question should be diverted. This Order indicates that it has been made in the interests of the owner of the land. Section 119(6) of the same Act states that, if I am to confirm the Diversion Order, I too must be satisfied in this respect. Furthermore, before the Order can be confirmed I must be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion.
15. Where an Order proposes to alter a termination point of the path in question, I must be satisfied that the altered terminus is on the same highway or a highway connected to it, and that it is substantially as convenient to the public².
16. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order, having regard to the following issues:
- a) the effect that the diversion would have on public enjoyment of the path as a whole;
 - b) the effect of the coming into operation of the Order on land served by the existing right of way; and
 - c) the effect of the new public right of way on the land over which it is created (or land held with it);
- having regard also, with respect to b) and c), to the provisions for compensation as set out in Section 28 of the 1980 Act.
17. I must have regard to the material provisions, if any, of the Rights of Way Improvement Plan ('ROWIP') produced by the Council and I must also take into account government advice, relevant legal precedents and other legislation which is applicable.

Reasons

18. No objections have been made to the proposal in terms of any of the issues set out in paragraphs 14 to 17 above.
19. The Order has been made at the request of the landowner and I am satisfied that it is expedient in his interest that the path be diverted.
20. No significant alteration is being made to the termination points of the path. The alteration at Point B (relocated to Point F) is minimal. It links to the same onward route and is substantially as convenient as the present link.

² Section 119(2)(b)

- 21. I have no evidence to suggest that the route will be substantially less convenient to the public as a consequence of the diversion.
- 22. No-one has indicated that the enjoyment of the path as a whole will be adversely affected and no other landowner has raised any concerns.
- 23. I did not identify any issues during my site visit which would cause me to question the expediency of confirming the Order.

Conclusions

- 24. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

Formal Decision

- 25. I confirm the Order.

Helen Slade

Inspector