



Order Decision

On papers on file

by Mark Yates BA(Hons) MIPROW

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

Decision date: 17 August 2016

Order Ref: FPS/D3450/4/17

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and Section 53A(2) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Staffordshire County Council (Public Footpath between Boat 23 and Pipe Green Common, Lichfield City) Public Path Diversion and Definitive Map and Statement Order 2014.
 - The Order was made by Staffordshire County Council ("the Council") on 16 December 2014 and proposes to divert the footpath, as detailed in the Order Map and Schedule. If confirmed, the Order would also modify the definitive map and statement, in accordance with Section 53(3)(a)(i) of the 1981 Act, once the provisions relating to the diversion come into force.
 - There were two representations outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Procedural Matters

1. In light of the representation from the Pipe Green Trust, the Council requests that the gates, which are located at point A on the Order Map, are recorded as limitations in the Order Schedule. I accept that the Order should be modified to ensure that these structures are recorded. In addition, I accept that the word "*alleged*" should be removed from the Order Map. It also appears to me that there is an incorrect reference in paragraph 3 in the Order that should be modified.
2. Before reaching my decision, I consulted with the parties regarding the matter outlined in paragraphs 7 and 8 below.

Decision

3. I confirm the Order subject to the modifications detailed in paragraph 10 below.

Main Issues

4. I need to determine whether it is expedient to confirm the Order in light of the main issues set out in Section 119 of the 1980 Act.

Reasons

5. The diversion is stated to be in the interests of the landowner for reasons of privacy and security as the footpath passes through the grounds of Leamonsley Manor. This issue is not in dispute and I accept that it is expedient to divert the footpath on this ground.
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6. Reference is made to improvement works being undertaken to the surface of the proposed path due to the boggy nature of the land. In light of these works the path is considered to be suitable for pedestrian use. There is nothing to suggest that the proposed path is now substantially less convenient for the public when compared to the existing path. The future maintenance of the footpath would be a matter for the Council to address.
7. This Order was made concurrently with an Order to add the footpath to the definitive map and statement and the latter has now been confirmed. It is apparent that the footpath terminates at its northern end at Pipe Green Common (point B on the Order Map) and does not connect with another highway. This Order proposes to divert the footpath so that it terminates at the junction with Footpath Nos. 25 and 26 (point D).
8. Section 119(2) of the 1980 Act states that "*A public path diversion order shall not alter a point of termination of the path or way- (a) if that point is not on a highway...*". In light of the above, it is apparent that the diversion fails this test and the Order as made cannot be confirmed. However, I agree with the Council that the Order could be modified to remove the B-D section of the proposed path. The termination point would therefore be unaltered. Whilst I note the preference of the Pipe Green Trust for the path to continue to point D, this is something that is outside of my powers. The Council could look at extending the footpath by Order or agreement with the landowner.
9. Having regard to these issues and the other tests that I need to apply there is nothing which leads me to conclude that it would not be expedient to divert the footpath, if modified in the manner requested by the Council. I therefore find that the Order should be confirmed with modifications.

Modifications

10. The modifications to the Order are as follows:

- Delete "3" from the second line of paragraph 3 in the first page of the Order and insert "4".
- Delete the final two lines of the description contained in Part 2 of the Order Schedule and insert "*The width of the new footpath will be 1.5 metres*".
- Insert after the end of the text in Part 3 of the Order Schedule, "*A pair of 3.67 metres wide field gates at point A on the attached plan (410085 309398)*".
- Delete the text underneath the heading "*Path finishes at*" in Part 4 of the Order Schedule and insert "*At grid reference 410101 309483*".
- Delete "*Alleged*" from the heading on the Order Map.
- Delete from the Order Map the section of path to be created between points B and D.
- Delete all references to point D from the Order Map.

Mark Yates

Inspector

Highways Act 1980, Section 119 &
Wildlife and Countryside Act 1981, Section 53A(2)
Diversion of ~~Alleged~~ Public Footpath
at Leamonsley in Lichfield Parish.

