
Order Decision

Site visit made on 18 January 2016

by Mrs H D Slade MA FIPROW

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

Decision date: 28 January 2016

Order Ref: FPS/Z1585/4/25

- This Order is made under Section 119 of the Highways Act 1980 ('the 1980 Act') and is known as the Footpath 95 Ashdon in the District of Uttlesford Public Path Diversion Order 2015.
- The Order is dated 7 January 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Essex County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I undertook an unaccompanied site visit on Monday 18 January 2016 when the weather was dry and bright. I was able to walk the proposed route, but although a route has been provided which closely approximates to the existing definitive line, the actual legal line of the current path is obstructed by a pond, and some fencing.
2. The Order was advertised twice, once in February 2015 and once in July 2015, because the original notice was lacking in detail. No new objections were received as a consequence of the second advertisement. Mr Goffee's objection was made in response to the Order but prior to the original advertisement date. I have nevertheless treated him as a statutory objector.
3. Two objections remain outstanding, two having been withdrawn prior to the submission of the case to The Planning Inspectorate. Mr Alan Goffee has made a qualified withdrawal of his objection on the basis that a sign is erected, but he remains unhappy that the original line of the path was obstructed by the landowner before the diversion order had been confirmed. Mrs Rogers maintains her objection on a number of grounds, some of which are relevant to my considerations and some which are not.

The Main Issues

4. 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 has been made in the interests of the landowner. Section 119(6) of the same Act states that, if I am to confirm the 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.

5. 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.
6. 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

Whether it is expedient in the interests of the landowner to divert the footpath

7. Regardless of whether or not the existing line of the footpath has been obstructed unlawfully, the property at New House Farm has been developed in such a way that the definitive line of the path would cross a number of paddocks and pass quite close to the side of the house itself. A pond has also been constructed which impinges on the present legal line of the path.
8. Diverting the route would also, in his view, improve privacy and security. However, I do not consider that in a rural location such as this, the need for privacy and security would be sufficiently enhanced by diverting the path as to warrant its diversion.
9. Nevertheless, I am satisfied that it is clearly in the interests of Mr Humphreys, the owner of the land, that the line of the path be diverted as this will avoid the need to re-instate the path and overcome the obstructions on its current legal line.

Whether the path will be substantially less convenient to the public as a consequence of the diversion.

10. The line of the footpath has clearly been altered before, and it has progressively moved to the west away from its natural line. Mrs Rogers lives in a property which lies opposite to New House Farm and slightly to the east of its main entrance. She objects to the proposed route on the basis that it will be less convenient for her family on their walks to Stocking Green and Radwinter, particularly for her children.
11. I acknowledge that this may be less convenient for her family, and would result in a slightly longer walk. The increase in distance would amount to approximately 190 metres, taking account of the additional 50 metres or so of

road walking to reach the new access point (Point F on the Order Plan). I have not been provided with any details of how often Mrs Rogers or her family actually make use of the footpath, and in the absence of any objections on this basis from members of the wider public, I place only limited weight on this factor.

12. Comments have been made by other parties that it moves the path slightly further away from the onward route to Ashdon, but I note that the path has always met the carriageway about mid-way between onward routes on the opposite side of the road (Footpath 90 to the west and Footpath 79 to the east). Thus moving the path junction in either direction would have resulted in it being further away from one or the other onward route. Again, I have been provided with no information on the frequency of use of the Order route or the direction in which users normally continue, and thus place minimal weight on this issue.
13. Overall, I do not consider that the diversion would render the path substantially less convenient to the public, although I acknowledge that there may be some degree of inconvenience to some people.

Whether it is expedient to confirm the Order:

The enjoyment of the path as a whole

14. In terms of the purpose of the path I accept that the diversion will tend to take the path away from the general direction of travel for some users – particularly for Mrs Rogers and her family. This may adversely affect their enjoyment of the route.
15. However, in terms of ease of use, the proposed route will be across ground which is firm underfoot and which follows a field edge. It will be clear to follow and easy to use. The existing route appears to run over ground which, in places, was clearly wetter underfoot than the proposed route.
16. In terms of the ambience of the route it provides similar views across the wider countryside, and it would not pass in such close proximity to the dwelling at New House Farm. For some users this may be an advantage.
17. On balance I consider that most users will not find that their use of the path as a whole is made less enjoyable by the diversion, and in some cases it may prove preferable.

The effect on land crossed by the right of way

18. No issues have been raised in connection with the land served by the existing route or held with it, and no issues of compensation arise.

Material Provisions of the ROWIP

19. No issues have been drawn to my attention in relation to the ROWIP so I can form no view on whether or not the proposal is in accordance with any material provisions contained within it.

Other Matters

20. Mr Goffee's comments (and those from other people who originally objected to the Order) regarding the obstruction to the existing line of the footpath are not

strictly relevant to the criteria I must apply. I acknowledge that it is regrettable that the diversion was effectively implemented prior to the confirmation of the Order, but I have not allowed that fact to influence my decision in any way.

21. Mrs Rogers raises a number of issues in her objection which relate to planning considerations. These will have been considered by the planning authority when dealing with the planning application, and are not relevant to my consideration of the criteria under Section 119 of the 1980 Act. I have not taken her views on these matters into account in coming to my decision.

Conclusions

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

Formal Decision

23. I confirm the Order.

Helen Slade

Inspector