



Order Decision

Site visit on 12 September 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: 11 October 2016

Order Ref: FPS/D3125/5/2

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the West Oxfordshire District Council Churchill Footpath 168/4 (Part) Public Path Diversion Order 2015.
- The Order was made by West Oxfordshire District Council ("the Council") on 14 May 2015 and proposes to divert a section of Footpath 168/4¹, as detailed in the Order Map and Schedule.
- There were six objections outstanding when the Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed subject to modifications set out below in the Formal Decision.

Procedural Matters

1. I undertook an unaccompanied visit to the site on 12 September 2016.
2. The notice of the making of the Order was re-issued at the request of the Secretary of State as the original was considered to be unsatisfactory. The Order itself was not re-made. One of the objectors (Mr Godfrey) refers to the typographical error in Part 2 of the Order Schedule in relation to the number of the path to be diverted. However, when taken as a whole, the Order is clear regarding the location of the path to be diverted. Therefore, I agree with the Council that, if confirmed, the Order should be modified accordingly. I address the other point raised by Mr Godfrey in paragraph 9 below.
3. As the Order has been referred to the Secretary of State for determination, the text relating to its potential confirmation by the Council is no longer applicable and should be deleted if the Order is confirmed.
4. A number of the issues raised by the objectors relate to the impact of the development on local residents and other planning matters which have no bearing on my decision. It would be for the Council to determine whether any action should be taken in respect of the alleged breaches of particular planning conditions. I need to consider whether the footpath should be diverted in light of the main issues set out below.

Main Issues

The statutory test

5. If I am to confirm the Order, I must be satisfied that it is necessary to divert the footpath to enable development to be carried out in accordance with the planning permission granted.

¹ This path forms part of the route known as the 'D'Arcy Dalton Way'

6. In considering the above test, consideration needs to be given to whether the relevant works in relation to the development are substantially complete. On this issue, paragraph 7.21 of Department for Environment, Food and Rural Affairs Circular 1/09 ("Circular 1/09") states:

"Where the development, in so far as it affects a right of way, is completed before the necessary order to divert or extinguish the right of way has been made or confirmed, the powers under sections 257 and 259 of the 1990 Act to make and confirm orders that [sic] are no longer available since the development, which the order is intended to enable, has already been carried out".

Other material considerations

7. The merits of the planning permission granted for the development is not an issue before me. However, the impact of a diversion on particular parties is a material consideration. This is reflected in paragraph 7.15 of Circular 1/09, which advises in respect of Orders made under Section 257 of the 1990 Act:

"That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order".

Reasons

Whether it is necessary to divert the footpath to enable development to be carried out

8. Planning permission was granted by the Council on 13 June 2014 for: *"Erection of cotswold stone walling with timber entrance gates to enclose & create external dining areas. Construction of timber pergola and enclose existing escape stairs and kitchen entrance. Associated landscaping works to include low level external lighting and replacement of existing externally illuminated post sign in revised location"*. In essence, the diversion relates to the section of the footpath which proceeds through the outside dining area of the Chequers Public House.
9. Mr Godfrey says that no detail in terms of the development is shown on the Order Map. Other objectors have queried the Order Map and additional plans provided. It is not disputed that the existing alignment of the footpath is correctly shown on the Order Map. In respect of the impact that the footpath would have on the permitted development, I have had regard to the planning documents provided and my visit to the site. Overall, I find that it is necessary to divert the footpath to enable the development to be carried out in full. This arises out of the physical obstruction of the path in places by the wall which is to enclose the dining area.
10. A number of submissions have been received regarding the works that have already taken place on site. I was able to walk through the outside dining area albeit not necessarily on the actual line of the footpath. Whilst the commencement of the works is not a matter for me to address, clearly there is a risk in such circumstances that the Order will not be confirmed.

11. I recognise that the wall along the southern boundary is complete. However, works are still to be undertaken in relation to the remainder of the wall and the erection of the gates. A temporary arrangement has been put in place to demarcate the western extent of the dining area. The development as a whole may be substantially complete. However, paragraph 7.21 of Circular 1/09 specifically refers to the development *in so far as it affects a right of way*. Having regard to the works to be undertaken, I do not find that the development is substantially complete in the context of the highway. There is still work to be undertaken which requires the diversion of the footpath.
12. For these reasons I conclude that it is necessary to divert the footpath to enable development to be carried out, which is not substantially complete in so far as it affects the right of way.

The extent to which the diversion of the footpath would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpath affected by the Order

13. The proposed route of the footpath proceeds over the existing footway of Langston Close and then along the edge of the car park to the rear of the Chequers Public House. In terms of its proximity to the public house the proposed path would be no less desirable than the existing path. I find that two relevant issues arise out of the objections in relation to the impact of the diversion on users of the footpath, namely vehicles over-sailing the parking bays and cars parked on the footway of Langston Close. The other issues raised relate to the grant of planning permission rather than the diversion of the footpath.
14. In respect of the parking bays, a row of bollards has now been erected to delineate the footpath and separate it from the bays. As long as these remain in place they will be sufficient to segregate walkers from vehicular traffic. For the avoidance of doubt, the Order could be modified to include the bollards in the description of the proposed path.
15. I do have concerns about cars parking on the footway so as to hinder the passage of pedestrians using the relevant section included in the Order and photographs have been provided of this occurring. However, ultimately this is a highway issue and the highway authority (Oxfordshire County Council) could look at whether vehicles should be prohibited from parking on this section of Langston Close. Consideration could also be given to action being taken in relation to vehicles which obstruct pedestrian access.
16. Having regard to the above, I do not consider that there would be any significant loss for the public if the footpath is diverted as proposed. Nor is there anything to suggest that the diversion will have an adverse impact on persons whose properties adjoin or are near to the path.

Conclusions

17. I have concluded that the diversion of the footpath is necessary to enable development to be undertaken in accordance with the planning permission granted for the site. In light of my conclusions regarding the other relevant matters, I am not satisfied that there are any disadvantages to the public generally, or for local residents, arising out of the diversion of the footpath that are sufficient to outweigh the benefits of confirming the Order.

Other Matters

18. The level of signage on the footpath is ultimately a matter for Oxfordshire County Council to determine.

Overall Conclusion

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

Formal Decision

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

- Insert after "*(point F)*" in the sixth line of the description in Part 2 of the Order Schedule, "*,as delineated by a row of bollards along its western boundary,*".
- Delete "*186/4*" from the eighth line of the description in Part 2 of the Order Schedule and insert "*168/4*".
- Delete all of the text underneath the seal located in the final page of the Order.

Mark Yates

Inspector

**Town and Country Planning Act
Section 257**

**Public Path Diversion Order
Churchill Footpath 168/4 (Part)**

- Existing Footpath (168/4)
to be diverted.
A-B-C-D Length = 27.5m
- - - Proposed Footpath diversion.
A-E-F-D Length = 31m
- Route of Unaffected Footpath
(168/4)
- Churchill Footpath (168/2)
Unaffected by Order



Date: **MAY 14TH 2015**

West Oxfordshire District Council
Woodgreen
Witney
Oxfordshire
OX28 1NB
Tel: 01993 861000
Fax: 01993 770255

