



Order Decision

Site visit carried out on 13 July 2016

by Peter Millman BA

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

Decision date: 25 July 2016

Order Ref: FPS/B5480/5/2

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The London Borough of Havering (Public Footpath 198) Stopping Up and Diversion Order 2015.
- The Order is dated 8 December 2015 and proposes to stop up a footpath and provide an alternative as shown on the Order Map and described in the Order Schedule.
- There were two objections outstanding when the London Borough of Havering ("the Council") submitted the Order to the Secretary of State for confirmation.

Summary of Decision: I propose to confirm the Order with a modification which requires advertisement.

Procedural matters

1. I carried out a site visit unaccompanied by anyone. I subsequently noted that one of the objectors, in a letter dated 20 April 2016, accompanying his Statement of Case, had asked to be present when I carried out the visit. An officer from the Planning Inspectorate contacted him, offering a second, accompanied visit, but he replied that he was content for me not to make a second visit.
2. I stated above that there were two objections outstanding when the Council submitted the Order to the Secretary of State. After that submission, a number of other people sent letters to the Planning Inspectorate objecting to the Order. I have had regard to these letters in coming to my decision.

Main issues

3. The Order states that it was made because the Council was satisfied that it was necessary that part of footpath 198 (between A and C on the copy of the Order map appended below) be stopped up in order to allow development, for which it had granted planning permission under part III of the 1990 Act, to be carried out. Before confirming the Order, I am required by Section 257 of the 1990 Act to be satisfied that there is a valid planning permission, and that it could not be implemented without stopping up the footpath.
 4. Even if I am satisfied on those issues, my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits and demerits of the proposed stopping up (including the provision of an alternative route) in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be extinguished by the Order. I must also approach the exercise of my discretion on the assumption that the issue has been resolved in favour of the
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development being allowed to proceed, and consider whether the disadvantages and losses flowing from the proposed stopping up would be of such significance that I should refuse to confirm the Order.

Reasons

The planning permission

5. The Planning Consent referred to by the Order, reference P1220.14, is for development at the former Old Windmill Hall site, St Mary's Lane, Upminster, for the erection of a 3 storey building comprising 22 retirement living apartments with communal facilities and landscaping.
6. I have seen copies of the relevant consent and the associated approved plans. These show that the development would not be possible unless part of footpath 198 was stopped up.

The merits and demerits of the proposed diversion

7. Footpath 198 leaves St Mary's Lane just to the east of the site of Old Windmill Hall (point C on the plan below). It is not signed or marked at this junction. It crosses a tarmac area, the site of the development for which planning consent has been given, and enters Upminster Park. The Park has a surface of short mown grass. The right of way continues in a south-south-easterly direction across the grass, although there is no sign at all of a trodden path on the ground, until it reaches a tarmac path (point A on the plan).
8. The proposed diversion also starts from St Mary's Lane and joins the existing path at A. It runs along a tarmac path which is designated, by signs, as National Cycle Network route 136. From A northwards, the tarmac is 2 metres wide, not including the narrow edging strip, which is level with the tarmac. Where the path starts to run through an area where there are some bushes on both sides of it, the tarmac surface widens to 2.6 metres, and then the path splays out further in the last couple of metres or so before it reaches the pavement of St Mary's Lane. There are two benches and four lamp posts adjacent to the path between A and B.
9. I visited the site on a sunny July morning, and stayed for 50 minutes, observing the use of the paths. During that time I saw one person walking a route approximating to C-A. Another person with a child started from C, but diverged from the right of way on entering the Park. Seventeen pedestrians and two cyclists used the full length of the proposed diversion, B-A, while two more cyclists and twenty or so pedestrians used short parts of the route, most of these starting from B and then spreading out across the Park when they were able. I am aware that typical use in the earlier morning and later afternoon may well be significantly different from what I observed, especially since there are schools in the vicinity.
10. Most objections are concerned principally with the safety of pedestrians on a route shared with cyclists. Cycling is prohibited in the Park, apart from on the designated Cycle Route, and objectors feel that accidents will be the inevitable result of confirming the Order. The Council's response is that there is already shared use of the Cycle Route and that there have been no reports of incidents. One objector states that he has witnessed 'a number of incidents' at the junction of the cycle route and St Mary's Lane, but it is not clear what these were and whether they occurred on the alternative route or the footway of St Mary's Lane.

11. One of the objectors included with his Statement of Case a risk assessment, carried out by the Council in 2012, examining the safety implications of allowing cycles on shared paths within Upminster Park. At that time bye-laws prohibited cycling within the Park. This assessment acknowledged that although accidents involving cyclists and pedestrians are uncommon, and that fewer than 3 pedestrians, on average, are killed by cyclists each year in the UK, most of these being hit when stepping into a road, there is a perception that sharing a pathway with cyclists can be dangerous. The assessment considered a number of factors specific to Upminster Park, such as the volume and speed of cycle traffic and visibility, and concluded that the likelihood of pedestrians being injured by being struck by a cyclist was 'unlikely', the likely consequences if that happened to be 'minor' and that therefore the risk level was 'acceptable'. According to the Council's 'risk matrix' no further action is needed where a risk is calculated to be acceptable.
12. This objector states that he would prefer a 'no cycles, no risk' policy, rather than a very low risk, but he does not challenge the Council's conclusion as to the risk level.
13. The applicant for the Order, McCarthy & Stone, included with its Statement of Case a copy of chapter 8 of the Sustrans National Cycle Network guidelines. This chapter deals with paths and areas free of motor traffic. There is a section concerning paths with shared use where there is no segregation of cyclists from pedestrians. The guidelines state that the preferred width of such paths is 3 metres with an 'absolute minimum' of 2 metres.
14. The Order states that the diverted right of way will be 1.8 metres wide. The applicant, commenting on the Order and the Sustrans guidance, states, 'upon measure McCarthy & Stone find the width of the alternative route to be 2.02m extending to 2.95m, with space for passing. Therefore this is considered to be an adequate width for a non-segregated route...' I concur. The McCarthy & Stone measurements agree with those I took; I did not include the narrow strip of edging in my measurement (paragraph 8 above) and I accept 2.95 metres as the width of the path where it splays out to join the footway at St Mary's Lane. I do not understand why the Council specified a lesser width in the Order, and one that does not meet the Sustrans guidance, when it could easily have specified a width of 2 metres.
15. I conclude, from the matters discussed in the previous five paragraphs, that if the width over which pedestrian rights extended between A and B was extended to 2 metres, and more where the tarmac path is wider, that would not pose an unacceptable risk to pedestrians.
16. On St Mary's Lane, roughly half way between C and B, there is a Toucan crossing, which caters not only for pedestrians, but also cyclists continuing along route 136, who are permitted to use the pavements at that point. Objectors were also concerned about the safety of the crossing, but that cannot be my concern – it is not on the route of footpath 198 or its proposed replacement.
17. The Council notes that the route between A and B is a much better path than that between A and C because it is surfaced and lit, rather than predominantly grassed and unlit. I consider that it would be much easier to use than footpath 198 at night and for those in wheelchairs and those with pushchairs.

18. Two objectors wrote that the entrance to the Cycle Route at B was between bushes and very intimidating at night. I do not doubt that some people might feel intimidated, but, as I have already noted, C-A is not lit at all, whereas there are four lamp posts between A and B and it is a straight, surfaced path. I do not accept that the proposed diversion would be less safe at night.

The development and disadvantages and losses

19. McCarthy & Stone, the applicant for the Order and a provider of retirement homes, included in its Statement of Case a detailed argument supporting the view that the planned development would help to meet the London Plan, which seeks to ensure that account is taken of the needs of older residents. If the development went ahead there would be significant contributions towards infrastructure costs and the provision of affordable housing in the borough as well as a payment to the Mayor's Community Infrastructure Levy. No objector questioned the importance of the development or disputed the figures and submissions provided by McCarthy & Stone.

Conclusions from the evidence

20. I conclude from the matters discussed in the preceding thirteen paragraphs that the proposed diversion of A-C onto A-B would provide a reasonably safe and easier to use alternative if it met Sustrans' minimum width standards. Any disadvantages caused by sharing the route with cyclists would not be such that I should refuse to confirm the Order (paragraph 4 above).

Other matters

21. A fault, perhaps minor, in the description of the alternative highway in part 2 of the Schedule to the Order is that it does not mention connections with public highways at each end of the path. That fault is easily remedied (see below at paragraph 23)

Conclusion

22. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with a modification to the description of the diverted footpath to show its connections at either end, and a modification to increase its width.

Formal Decision

23. I propose to confirm the Order with the following modifications:

- In part 2 of the Schedule to the Order, add, after 'Commencing at' 'the existing footpath 198 at', and add, after 'approximately 87 meters to' 'a junction with St Mary's Lane at'
- Also in part 2 of the Schedule, delete '1.8 meters' and add '2 metres or the width of the tarmac surface, whichever is greater, to a maximum of 2.95 metres.'

24. Since the confirmed Order would affect land not affected by the Order as submitted, I am required by virtue of Paragraph 3(6) of Schedule 14 to the 1990 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Peter Millman

Inspector

The Former Old Windmill Hall St Mary's Lane, Upminster, RM14 2QH
1987 Footpath Realignment April 2015

