



## Order Decision

Site visit on 28 October 2015

**by Mark Yates BA(Hons) MIPROW**

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

**Decision date: 10 December 2015**

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### Order Ref: FPS/Q3115/5/3

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The South Oxfordshire District Council, Public Footpath (Park Farm, Waterstock) Public Path Stopping Up Order 2014.
- The Order was made by the South Oxfordshire District Council ("the Council") on 30 July 2014 and proposes to stop up a section of footpath, in the parish of Waterstock, as detailed in the Order Map and Schedule.
- There was one objection 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.**

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### Procedural Matters

1. The Order was re-advertised in light of concerns raised about the placing of the site notices. There is nothing to suggest that the statutory requirements of the 1990 Act have not now been met in relation to the making of the Order. This is distinct from the process undertaken in connection with the granting of planning permission, which is not a matter for me to address.
2. The path proposed to be stopped up is not currently recorded as a public right of way. It was shown on the definitive maps for the area of 1953 and 1968<sup>1</sup> but excluded from later editions. Footpath No.5 has been shown since 1999 on an alternative alignment which lies to the south-west of the proposed development. I consider that no issue arises out of the delineation of the present alignment of Footpath No. 5 on the Order Map bearing in mind that this is the route currently recorded on the definitive map.
3. The Council accepts that a drafting error may have occurred in respect of the route shown on the definitive map. However, responsibility for the definitive map lies with Oxfordshire County Council. Clearly unrecorded public rights could exist over the section of path the Council wishes to stop up. In the circumstances, I shall consider whether any such rights should be stopped up.

### Main Issues

#### *The statutory test*

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

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<sup>1</sup> Recorded as a section of Waterstock Footpath No. 5

### **Other material considerations**

5. The merits of the planning permission granted for the development is not an issue before me. However, the impact of a stopping up on particular parties is a material consideration. This is reflected in paragraph 7.15 of Department for Environment, Food and Rural Affairs Circular 1/09 ("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 stop up the footpath to enable development to be carried out**

6. Planning permission was granted on 16 August 2013 for the demolition of existing buildings and the erection of two new dwellings, retention of traditional buildings as ancillary outbuildings and erection of new stables/outbuildings (reference P13/S1463/FUL). As outlined above, issues relating to the validity of the planning process are not matters for me to address.
7. Following the making of the Order, a further planning permission has been granted for this site (reference P14/S2482/FUL). This separate permission contains changes to the design of one of the houses to be built on the site. I do not consider that it now falls to me to consider the stopping up in the context of the second permission given that only the first permission is specifically set out in the Order. On this issue, I agree with the objector that, if reliance is placed on the second permission, a new Order should be made. However, the submissions of the Council rely on the first permission which I understand is still extant.
8. The objector has referred to the decision of another Inspector in relation to an appeal against the refusal by the Council to grant planning permission for the erection of four houses on the site<sup>2</sup>. From a reading of this decision, I find that it has little relevance to the present circumstances. Whilst it may have been possible to pursue an alternative solution, in light of the Order before me, I need to consider whether the section of path should be stopped up.
9. The path would proceed through the extension to Building No. 2 in the first planning permission. This is distinct from the present obstruction that will remain in relation to the external wall facing the road. In my view, it would clearly be necessary to stop up the footpath to enable this part of the development to be carried out. However, I give no weight to the fact that the path would cross the gardens of the proposed properties.

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<sup>2</sup> Determined in January 1998

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

10. There is nothing apparent to suggest that Footpath No. 5 does not provide a convenient option for the public bearing in mind that it is the route currently used in this locality and is located outside of the site of the proposed development. Further, a stile will be replaced by a kissing gate where the presently recorded footpath meets Church Road which should facilitate access. In respect of the views of the water tower, there is little difference between the points that the two paths meet the road.
11. The objector points to the possibility that Footpath No. 5 could be deleted from the definitive map in light of the potential drafting error. Whilst this issue could potentially arise, I am not aware that any application or proposal is under consideration to delete the relevant section of Footpath No. 5. In respect of the views expressed by the parties regarding paragraph 4.35 of Circular 1/09, it needs to be borne in mind that Footpath No. 5 was not recorded on its present alignment until 1999 and public rights could have been dedicated prior to its inclusion on this edition of the definitive map. Nonetheless, I have to rely upon the fact that the footpath that forms the alternative route is recorded on the definitive map.
12. Having regard to the above, I do not find that there would be any loss for the public at the present time if the path is stopped up. Nor is there anything to suggest that the stopping up will have an adverse impact on persons whose properties adjoin or are near to the footpath affected by the Order.

***Conclusions***

13. I conclude that the stopping up of the footpath is necessary to enable development to be undertaken in accordance with the planning permission granted for the site (reference P13/S1463/FUL). Further, I am not satisfied it has been shown that there are any disadvantages to the public arising out of the stopping up that are sufficient to outweigh the benefits of confirming the Order.

**Overall Conclusion**

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

**Formal Decision**

15. I confirm the Order.

*Mark Yates*

**Inspector**