

## Order Decision

Site visit made on 6 September 2016

**by Barney Grimshaw BA DPA MRTPI(Rtd)**

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

**Decision date: 13 September 2016**

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### **Order Ref: FPS/Z1585/4/28**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Essex County Council, Footpath 12 (part) in the Parish of Ulting Public Path Diversion Order 2015.
- The Order is dated 8 May 2015 and proposes to divert part of Footpath 12 running between Church Road and All Saints Church, Ulting, as shown on the Order Map and described in the Order Schedule.
- There were 4 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.**

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#### **Procedural Matters**

1. I made an inspection of the Order routes on Tuesday 6 September 2016. On my visit I was able to view both the existing and proposed routes, although it was not possible to walk along the whole of the current definitive route.
2. In writing this decision I have found it convenient to refer to points along the Order routes as marked on the Order Map. I therefore attach a copy of this map.

#### **The Main Issues**

3. The Order is made in the interests of the owners of the land crossed by the footpath. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:
  - It is expedient in the interests of the landowners that the footpath should be diverted;
  - The new footpath will not be substantially less convenient to the public;
  - The diversion is expedient with regard to:
    - the effect on public enjoyment of the right of way as a whole;
    - the effect on other land served by the existing right of way;
    - the effect of the proposed new right of way on the land over which it is created and any land held with it.

1. In addition, where a diversion will alter a point of termination of a path or way, as in this case, the proposed new point of termination must be on the same highway as the existing point, or one connected to it, and must be substantially as convenient to the public.
2. Regard should also be given to any material provisions of the Rights of Way Improvement Plan for the area.

### **Reasons**

3. The definitive route of the footpath is currently obstructed and members of the public have been using an alternative 'unofficial' route for some time. Nevertheless, I have assessed the Order as though the definitive route is unobstructed and available to the public.

*Whether it is expedient in the interests of the landowners that the footpath be diverted*

4. The definitive route of the footpath runs through the garden of the property Church Cottages which is now a single dwelling and very close to the house itself. The owners of the property, who have applied for the diversion, consider that it would greatly enhance the privacy and security of their property.
5. In my view the proposed diversion would clearly be expedient in the interests of the landowners.

*Whether the new point of termination of the footpath will be substantially as convenient to the public*

6. The proposed new northern point of termination of the path (Point C) is on the same highway, Church Road, as the existing point (Point B) but roughly 90 metres further to the west. I can see no reason why it will not be substantially as convenient to the public.

*Whether the new footpath will be substantially less convenient to the public*

7. Footpath 12 is a cul de sac path running between the settlement of Ulting and the churchyard of All Saints Church. Between Point A and the churchyard the path runs along the access drive to the church and is unaffected by the proposed diversion. From Point A the path currently runs generally north-eastwards to Point B, a distance of roughly 125m. If the Order is confirmed the path will be diverted to run along the northern part of the church access drive, which is not currently recorded as a public right of way of any sort, for about 90m (Points A to C). Path users would then need to walk eastwards along Church Road for a further 96m to reach Point B. The total distance to be walked between Points A and B would thus increase from 125m to 186m as a result of the diversion.
8. The width of the new route is proposed to be 2m as part of a wider drive with a good surface. The definitive statement includes no specified width for the existing route which crosses a grassed area and an unsurfaced section through trees. There is no significant gradient on either route. The proposed new route is likely to be easier to negotiate by less able users.
9. Overall, it is my view that the relatively short additional distance of 61m to be walked would not make the proposed new footpath substantially less

convenient to the public and, in other respects, the new path would be at least as convenient as the existing one.

*The effect on public enjoyment of the right of way as a whole*

10. The current definitive route of the path has apparently been obstructed and not available for public use for at least 15 years. At Point A there is now a substantial hedge with no sign of a gap where the route should run. Objectors state that in 2001 the path was diverted with the agreement of Essex County Council to a new line at the edge of a field to the east of Church Cottages. On my visit this route was somewhat overgrown but still passable. However, this diversion was never formally made and accordingly the definitive map was not modified.
11. The main concern of objectors appears to be that, if the diversion goes ahead, Footpath 12 will revert to being a cul de sac path as currently shown on the definitive map, albeit on an altered route, and that the opportunity for circular walks using another 'unofficial' route will be lost. This may be the case, although I am not aware of the landowners' attitude to allowing continued permissive use of any particular route. I also appreciate that this might have an effect on public enjoyment of the Order route. However, for the purpose of determining the current Order, I can only consider the effect on public enjoyment of diverting the route A to B to the route A to C and not the effect of the possible loss of an unrecorded alternative route.
12. The current route of the path crosses what is clearly a private garden and runs very close to windows of a private house. Some path users might feel uncomfortable using such a route even if it was made clear to them that it was a public right of way. The proposed new route runs along the access drive to the church (and a section of a quiet road) and would seem unlikely to pose any difficulty for users.
13. Overall, it is my view that the diversion proposed in the current Order will not have a significant adverse effect on public enjoyment of the right of way as a whole.

*The effect on other land served by the right of way*

14. I have seen no evidence to suggest that the proposed diversion would have any adverse effect on other land served by the existing right of way.

*The effect of the new right of way on the land over which it is created and other land held with it*

15. The proposed new route of the footpath runs over part of the access drive to All Saints Church which is not currently recorded as a public right of way of any sort although it is available for the public to use. It is understood that the church owns the land crossed by the drive. On behalf of the Vicar, Churchwardens and Parochial Church Council of St Andrew's Church Hatfield Peverel and All Saints Ulting, confirmation has been given that there is no objection to the proposed diversion.

*The Rights of Way Improvement Plan (ROWIP)*

16. No party has referred to the ROWIP and I am not aware of any provision of it relevant to the current Order.

## **Other Matters**

17. Objectors point out that the route between Points A and C is already available to the public as part of the access drive to the church and they suggest that, as a result, the Order effectively proposes the stopping up of an existing path rather than its diversion. However, this route is not a public right of way and, although there is no suggestion that the church has any current plans to prevent public access, its availability for continued public use cannot be guaranteed. Accordingly, it is appropriate for it to be proposed as a new right of way in the Order.
18. Objectors questioned whether the applicants for the Order also owned land crossed by the 'unofficial' alternative route currently used. Although, as I have stated previously, this route is not relevant to the determination of the current Order, I note that the applicants, Mr and Mrs Smith, have submitted a copy of a Land Registry entry showing that they do own this land.

## **Conclusions**

19. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

## **Formal Decision**

20. I confirm the Order.

*Barney Grimshaw*

**INSPECTOR**

