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## Order Decision

Site visit carried out on 19 July 2016

**by Peter Millman BA**

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

**Decision date: 8 August 2016**

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### **Order Ref: FPS/U2235/5/1**

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as The Maidstone Borough Council (Footpath no. KH396) Public Path Diversion Order 2015.
- The Order is dated 13 July 2015 and proposes to stop up a footpath and create an alternative as shown on the Order Map and described in the Order Schedule.
- There was one objection outstanding when Maidstone Borough Council ("the Council") submitted the Order to the Secretary of State for confirmation.

**Summary of Decision: I have confirmed the Order with a modification.**

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### **Procedural matters**

1. I carried out a site visit accompanied by the Health and Safety Manager of Lenham Storage, the applicant for the Order. This was purely for safety reasons and I did not discuss any aspect of the cases for or against the Order with him.
2. This Order was originally scheduled to be determined following a public hearing, which had been requested jointly by two objectors. These objectors, however, withdrew their objection and the Order was determined by the written representations procedure.

### **Main issues**

3. The Order states that it was made because the Council was satisfied that it was necessary that part of footpath KH396 (between B 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 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.
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## **Reasons**

### ***The planning permission***

5. The planning permission referred to by the Order is for the erection of infill building between two workshops, along with the erection of new external walls and other works to existing warehouses to enclose existing covered spaces at Lenham Storage Site, Ham Lane, Lenham.
6. I have seen copies of the relevant permission and the associated approved plans. These show that the development would not be possible unless part of footpath KH396 was stopped up.

### ***The merits and demerits of the proposed diversion***

7. Footpath KH396 starts from Old Ham Lane in Lenham (point A on the map appended below), and runs in an easterly direction. Soon after its start (point B) it enters the applicant's premises, a large storage and distribution facility. It runs between two buildings before entering and crossing a yard or loading-bay area which, at the time of my site visit, was being used by a number of heavy goods vehicles manoeuvring trailers. The footpath is marked out across this yard in the manner of a zebra crossing, by black and white stripes. Workers in the yard were wearing high-visibility jackets, and, as noted in the applicant's statement of case, are required to do so. The footpath has a cul-de-sac ending at a road (point C), once a publicly maintained vehicular highway, but which, according to the Council's evidence, is no longer publicly maintained; it runs into the centre of the storage and distribution site. The footpath between B and C would be stopped up by the Order.
8. Although I have seen no evidence that it carries public rights, a path is marked out on the side of the one-time public road, leading north-eastwards for about 60 metres to the start of footpath KH395, which leads in an easterly direction, across the applicant's car park, to an alleyway between houses which takes it, after a few yards, to Robins Avenue. Turning south on Robins Avenue takes a pedestrian, after a couple of hundred yards, to Lenham Station. The western end of footpath KH395 is shown on the Order map.
9. The proposed diversion would start at B and run, with a width of 2 metres, behind the gardens of houses on Old Ham Lane, to point E. At present, there is a close-boarded fence next to the road between E and F. Planning permission has been granted for this fence to be moved back from the road edge, and for a post and rail fence to be provided next to the road, leaving between them a 1.2 metre wide footpath from E to F. The Order provides for staggered barriers at E and F to prevent motorcycle access. From F the diverted path would continue at a width of 2 metres to end on Ham Lane at G.
10. The Ramblers originally objected to the Order, although they agreed that, from a public safety point of view, a diversion of footpath KH396 would be an advantage. Having been assured by the applicant that a hand-rail would be provided next to the road between E and F, that there would be access to the proposed diversion from Old Ham Lane at E, that the applicant would apply for a diversion of footpath KH395 so that it would provide a link to Ham Lane and in the meantime would provide a permissive path to the same effect, provided this Order was confirmed, they withdrew their objection.
11. The remaining objection is based on a number of grounds. The objector argued first that the diversion would make the journey on foot from properties

- on Old Ham Lane (shown on the Order map) to the railway station much longer, and that this did not 'contribute to the general aim of sustainability'. He provided no evidence that any of the residents of the 8 properties on Old Ham Lane used footpath KH396 to get to the station. The extra distance would be around 150 metres. I note that it is by no means clear that there is a continuous public right of way on foot linking KH396 to KH395 (see paragraph 8 above), although it may be accepted by the applicant that there is. It seems to me that, in the absence of evidence about use and the existence of public rights, this objection cannot carry significant weight.
12. Although the objector had seen a copy of the planning permission which provided for the setting back of the close-boarded fence and provision of a post and rail fence between E and F (paragraph 9 above), he commented that, unless the works were specified in the Order, they might not happen. He would withdraw his objection on this point, however, if they were. It seems to me that the Order can easily be modified by adding the works to those already specified in paragraph 4.
  13. The path between E and F would still, however, be only 1.2 metres wide, and the objector finds this unacceptable. Disabled users, he states, would not be able to pass each other on this stretch, which should be 2 metres wide. I accept that 1.2 metres is not an ideal width for a footpath, especially since part of the existing footpath KH396, created by a diversion order in 1982, has a width shown in the Definitive Statement as 2 metres. The applicant argues that the close-boarded fence could not be moved further back from the road because there would then be insufficient room for the turning of vehicles in that area of the site.
  14. The next point of objection is that the Order would 'leave footpath KH395 apparently leading to nowhere.' The Definitive Map, however, already shows it apparently leading only to the road within the site which may no longer carry public rights. I mentioned above (at paragraph 10) the agreement between the Ramblers and the applicant, and the assurances that have been given. The outcome of these with regard to the diversion of footpath KH395 or the provision of a permissive path cannot be incorporated into this Order, since the result of an application for a diversion order cannot be predicted, and a 'mandatory permissive' path would not be permissive. The assurances, or promises, made by the applicant, are in the public domain and I consider that they can be given some weight.
  15. The Council's view of the Order is that it will, if confirmed, provide benefits by removing the requirement for users of the footpath to walk through the centre of an industrial estate and by removing the existing conflict between pedestrians and the large number of heavy goods vehicles that currently use the applicant's site.
  16. It seems to me that, having made a site visit and considered those points mentioned above as well as other matters raised by the objector, apart from the necessity of diverting footpath KH396 if the planning permission is to be implemented, it would make very good sense for safety reasons to divert it. It is possible that there are some people whose rights would be affected (see paragraph 4 above) by the diversion, because their journey to the station would be lengthened, or because they might be inconvenienced by the section of path that would only be 1.2 metres wide, but no evidence has been provided that any such disadvantage would be significant. In my view any disbenefits

would be greatly outweighed by the increase in safety for the general public using the footpath if it were diverted as proposed by the Order.

### **Conclusion**

17. 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 add an additional work to be completed before it comes into effect.

### **Formal Decision**

18. I confirm the Order with the following modification:

- Add, at the end of paragraph 4 of the Order, 'A 1 metre high post and rail fence will be erected on the north-western side of the footpath, between it and Old Ham Lane, between points E and F on the Order map.'

*Peter Millman*

**Inspector**

