



Order Decision

Hearing on 28 June 2016

by Sue Arnott FIPROW

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

Decision date: 28 July 2016

Order Ref: FPS/Z1585/4/26

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Essex County Council Footpaths 25, 27 and 54 Helions Bumpstead Public Path Diversion Order 2014 and is dated 26 September 2014.
- The Order proposes to divert parts of public footpaths 25, 27 and 54 to the south of the village hall and recreation ground in Helions Bumpstead, as detailed in the Order map and schedule.
- There were four¹ objections outstanding when Essex County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

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

Procedural Matters

1. I held a public local hearing into the Order at the Village Hall in Helions Bumpstead on 28 June 2016. During the previous afternoon I walked (unaccompanied) parts of the existing and proposed routes of Footpaths 25 and 27 and the new route of Footpath 54. Following a lunch break during the hearing, I adjourned to the site and conducted a further inspection of all three footpaths accompanied by supporters of and objectors to the Order. The hearing resumed in the village hall and, after discussing all the relevant the issues, the formal proceedings were brought to a close.
2. At the beginning of the hearing I invited clarification of the position taken by Helions Bumpstead Parish Council (HBPC) as regards the Order. This was prompted by a letter submitted to me at the hearing from Ms West (former Footpaths Representative for HBPC) in which she confirmed that the views expressed in a previous letter of support for the Order had been her personal opinion, not the views of HBPC.
3. Representing HBPC at the hearing, Mr Turner fully explained the Parish Council's views. However a letter sent to the Planning Inspectorate by the Clerk, Mr Evans, after the deadline for the receipt of relevant documents was not formally submitted to the hearing and I have therefore not included it in the list at the end of this Decision.
4. For reasons which were not fully explained, the objection from the Ramblers' Association (RA) had not been noted by Essex County Council (ECC) when the Order was first advertised. Due to irregularities in the wording of the initial notice, ECC was required to undertake further advertisement. In response, the

¹ See paragraph 4

RA lodged a duly made objection to clarify its position and therefore appeared at the hearing, represented by Mrs Evans, as a statutory objector.

5. The RA drew attention to errors that had appeared in the advertisement giving notice of the forthcoming hearing. In this notice ECC had identified the proposed diversion as being at "Whitegates" (not "Paddock View" - the current name of the property); it had referred people wishing to inspect the relevant documents to the wrong District Council (Brentwood instead of Braintree) where it had stated the papers were available but they were not.
6. Responding for ECC, Mr Page said the documents had been sent to Braintree District Council, that the Order map made quite clear where the proposed diversion(s) were located and that no-one would have been misled by the obvious mistake in the name of the District Council.
7. It further emerged that the notices which are required to be erected on site had been sent by ECC to the applicant, Mr McKenna, who confirmed he had erected them but they had disappeared shortly afterwards.
8. I recognise that the purpose of these notices is to ensure that anyone who wishes to attend and/or participate in the hearing can make arrangements to do so. It is therefore essential that the public notices published are accurate and give the necessary information. There is clearly the possibility here that people could have been misled by the mistakes in this notice. However, having been assured by several people attending the hearing that the event had been very well publicised within the village by other means, I concluded that it would not be in anyone's interests to adjourn the hearing so that it could be re-arranged and re-advertised.
9. In support of his case, Mr McKenna made comparisons with the diversion of another footpath in the village that had been processed by ECC at the same time as his own application. The Order to divert Footpath 38 is not before me for determination and, as I made clear at the hearing, any inconsistency in approach from any of the parties involved is not a matter for me. I will address only submissions that are relevant to the proposed diversions of Footpath 25, 27 and 54.

The Main Issues

10. The requirements of Section 119 of the Highways Act 1980 (the 1980 Act) are that, in this case, before confirming the Order I must be satisfied that:
 - (a) it is expedient in the interests of the owner of the land crossed by Footpaths 25, 27 and 54 that the rights of way in question should be diverted;
 - (b) the new termination point of Footpath 54 (being on the same highway) will be substantially as convenient to the public;
 - (c) in each case, the new routes to be provided will not be substantially less convenient to the public; and
 - (d) it is expedient to confirm the Order having regard also to (i) the effect of the diversions on public enjoyment of each path taken as a whole, and (ii) the effect the coming into operation of the Order would have with respect to other land served by the existing paths and the land over which the new paths would be created together with any land held with it, having had regard to the provision for compensation.

11. Further, in determining this Order I am required to have regard to any material provisions in any rights of way improvement plan for the area. I am also mindful of the requirements of the Equality Act 2010.
12. Where a proposal to extinguish a public right of way is being considered, section 118(6) of the 1980 Act provides that, for the purposes of deciding whether a right of way should be stopped up, any temporary circumstances preventing or diminishing its use by the public shall be disregarded. Although the same provision does not appear in section 119, it is generally accepted that when considering whether the right of way will or will not be substantially less convenient to the public in consequence of the diversion, an equitable comparison between the existing and proposed routes can only be made by similarly disregarding any temporary circumstances preventing use of the existing route by the public. Therefore, when I considering the question of convenience, I shall regard the existing routes as unobstructed and maintained to a standard suitable for those users who have the right to use them.

Reasons

Background

13. In 2014 the applicant Mr McKenna erected locked gates across Footpath 54, a short distance to the south east of point D (the junction of Footpath 54 with Church Hill). This was accompanied by the positioning of a notice making clear that anyone who wished to walk the definitive line should ring a buzzer whereupon they would be let through. As an alternative, people were invited to use the proposed diversion (shown on the Order map as D-F-G-E), along a route which had been offered unofficially as an alternative for some time.
14. The applicant purchased the property now known as "Paddock View" in 1999 in full knowledge of the existence of the footpaths which cross his land. However, he submits that during the last 17 years, his family's usage of the house and land has changed. This is the basis of his request that Footpaths 25, 27 and 54 be diverted.
15. These changes prompted him to erect notices at point F, where the public first enters his land when using the alternative to Footpath 54. One notice that has been in place for several years refers to "DOGS RUNNING FREE" in the field. A second notice that has been at F for around 5 years states "WARNING: PRIVATE – (SHOOTING)² VERMIN CONTROL UNDERTAKEN : FOR SAFETY STAY ON FOOTPATH ; ALL DOGS TO BE KEPT ON LEAD DUE TO LIVESTOCK".
16. These notices, together with the loss of the signpost from point F around 3 years ago, have meant that usage of Footpaths 27 and 54 is said to have declined. Although HBPC has, on many occasions, requested that ECC replace the signpost at point F, it has declined to do so. Further, Mr Page explained that it is not normally ECC policy to require that a right of way be open and usable by the public before considering an application for diversion.
17. As I have noted above, I shall disregard these notices for the purposes of considering the convenience tests required by section 119 of the 1980 Act.

² Whilst the legality of these notices is not a matter for me to determine, I note that it is not a specific offence to shoot across a public footpath. However to do so may constitute a common law nuisance, wilful obstruction of a highway under section 137 of the 1980 Act, a breach of the Health & Safety at Work Act 1974 or intimidation.

Footpath 54

The interests of the owner of the land

18. The definitive line of this footpath runs along the vehicular access drive to the house occupied by the appellant and his family.
19. Since the front of the house was extended towards the path (with planning permission granted in 2009), the family often eats outdoors on the terrace outside the house. Moving the footpath further from the house will increase privacy and make it less stressful for the family as people pass by.
20. Further, Mr McKenna added that there have been occasions when people have walked right up to the house and peered in the windows. Also in 2012 and in 2014 there were attempted thefts from cars parked in the drive that were reported to the Police.
21. The new gates erected in 2014 were a response to constant problems resulting from people leaving open the previous gate so that the family's dogs were let out of the garden. As a consequence, Mr McKenna had been warned about controlling his dogs.
22. The proposal is therefore to realign Footpath 54 so that it passes approximately 40 metres away on a broadly parallel line passing outside the garden fence which separates the curtilage³ of the house from the adjacent field.
23. In summary the proposed diversion would enable the applicant and his family to enjoy greater privacy around their home, to increase their security and to separate their dogs and other domestic animals from the public. I have no hesitation in accepting that the proposal to re-align Footpath 54 would be expedient in the interests of the owner of the land.

Convenience to the public

24. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations.
25. If using Footpath 54 to walk between Water Lane and Church Hill, the distance would be longer but local resident Ms Simmons, who walks the alternative path regularly with her family, said she found this quite acceptable. She reported that the applicant always keeps the path mown and easily walkable.
26. ECC supports the proposed diversion, commenting also that re-aligning the footpath would mean the public footpath would not be shared by vehicles driving to and from the property. Although the RA drew attention to EEC's ambivalent position as regards shared use of routes elsewhere, it does not oppose this diversion, commenting that the views of the local community should be paramount here. HBPC does not oppose the diversion of Footpath 54.
27. Overall, with the existing route E-D being replaced by E-G-F-D where E-G forms part of the existing Footpath 22 and F-D is part of Footpath 27, I agree

³ Mr McKenna asserted that planning permission granted in 1993 included a change to residential use of the land between the drive and the proposed new Footpath 54. However, whilst Mrs Peak submitted written details of various planning permissions applicable to the site, no plan was available to indicate the extent of the land covered by the 1993 permission.

that the new route proposed would not be substantially less convenient to the public than the present Footpath 54 (if open and passable).

28. Insofar as the diversion would leave Footpath 54 terminating at point F rather than on Church Hill (at D) I conclude that the connecting length of Footpath 27 (D-F⁴) would render the point of termination of Footpath 54 substantially as convenient as the existing point D.

Other considerations

29. As regards the effects on enjoyment of Footpath 54 by the public, ECC recognises that many members of the public feel uncomfortable about walking through a private residential space, despite having a right to do so.
30. Indeed, given the proximity of the existing footpath to the dwelling, the views are more open from the new route with the path running along the edge of the field. There is no doubt that the line of the footpath would be less direct but on balance I consider there to be no significantly detrimental effects on the public's enjoyment of the route (assuming the removal of the notices which presently discourage use).
31. Compensation issues are not relevant here since the applicant owns the land over which both the present and proposed routes pass. No adverse effects arising from the diversion on any of the land concerned have been drawn to my attention.

Footpaths 25 and 27

32. The sections of footpath that are proposed for diversion (F-L and J-L) cross a large paddock adjacent to the enclosed garden area forming the immediate curtilage to the McKennas' house. Footpath 27 runs from one corner diagonally across to the other and Footpath 25 cuts across the south eastern corner of the field.
33. The status of the land crossed by these paths (together with Footpath 22 and the proposed new line of Footpath 54) could not be confirmed so that it is not certain whether or not it is residential or agricultural land for planning purposes. At the time of my visit, it had the appearance of predominantly agricultural land with the majority of the field laid to grass (the intention being to cut hay in due course) but towards the north west nearer to the house are a couple of informal golf greens. Towards the south and east of the field, the ground surface is uneven as a consequence of the course engineered for scrambler bikes that has since grown over.

The interests of the owner of the land

34. The applicant wishes to realign these two cross-field paths so that instead they follow the edge of the paddock. He points out that he is not seeking to divert rights of way off his land, only to 'tidy them up'. He often sees people wandering off the line of Footpath 27 and submits that by providing a more clearly identifiable route along the field edge, the problem will be resolved and the public will find it easier to follow.
35. The McKenna family keep horses and some sheep and pigmy goats. Whilst none were in the paddock at the time of my visit because of the hay crop, they

⁴ On the site visit it was noted by all present that the definitive line of Footpath 27 between D and F is obstructed by a fence though a gap does exist nearby.

are present in the field at other times. Finding broken glass⁵ in the paddock has been a particular worry.

36. Mr McKenna did not make clear whether he would intend to fence the diverted footpaths from the field or not. He said it could be fenced or hedged if necessary although he appeared to be flexible on this.
37. Both the RA and HBPC questioned why Footpath 22 had not been included in the proposals for change. Indeed with this route continuing to cross the paddock, it is difficult to see how the removal of Footpath 25 and Footpath 27 in particular will provide any real benefit to the applicant in terms of land management. Mr McKenna said he was happy to leave this as people often used it to get to the recreation ground.
38. If the new route F-J-K-L is not separated from the field by a fence or hedge, then the public may still encounter horses and other animals (and vice versa). Yet if it is fenced or hedged, then the continued presence of Footpath 22 (and 54) will reduce any benefit that might derive from removing the other two paths from the field.
39. Whilst I accept there will be some advantages for the land owner as a result of the diversions, the extent to which this will provide opportunities for better land management have not been clearly demonstrated and are somewhat ambiguous. Having the public walk around the edges rather than across the field is 'tidier', but the same benefits (keeping people to the line of the path and/or separating horses and walkers) might equally be gained by better waymarking or fencing Footpath 27 in its current position.
40. Therefore I conclude that the proposed diversions of Footpaths 25 and 27 would be expedient in the interests of the landowner but not significantly so.

Convenience to the public

41. Under this heading I have given particular consideration to the length, width, gradient and surface of the present and proposed routes when assessing their relative convenience in the context of the roles played by Footpaths 25 and 27 in the local network.
42. The original purpose of Footpath 27 had been for children to walk to the school but this ceased once it closed and the building became the village hall. Mr McKenna submitted that if the path were now used to get to the recreation ground (although he had seen very few people doing so), the new route L-K-J would be much easier.
43. That might be so, but if one were walking via Footpath 27 directly to the village hall, then the alternative via L-K-J-F would increase the journey by almost 75 metres. That in itself may not be a substantial inconvenience when considering the overall length of the journey but it is a significant change and may be a challenge for some people, especially young children and the less mobile.
44. Some objectors submit that Footpath 27 is a short-cut within the village but this can only be so for those people living along Water Lane at New House or Boblow Hill, or for others walking from that direction. Mr McKenna queried this, pointing to the lack of any obvious trod along the definitive lines of both

⁵ Mr McKenna did not make clear whether this had been found near to the public rights of way or had been thrown over from the recreation ground

- Footpaths 25 and 27. Despite being left uncultivated, the continuations of both paths through the broad bean field to the south show little evidence of regular use. At the hearing, Mr Nicholson said that some children had chosen not to use the diversion. The Parish Council and other objectors contend this lack of use is due to the intimidating notices at point F but whatever the cause, this makes assessment of the present use and future value of this 'short cut' difficult to quantify.
45. The route is not included in any publicised village walks but potentially does have a strategic function for longer distance walking, cutting out the much longer alternative via village roads where traffic is said to travel far too fast.
 46. I noted two places between J and F where the surface of the new route was wet underfoot. I do not doubt that this could be remedied and suitable drainage installed but I note that the Order does not require the necessary works to be completed to the satisfaction of the highway authority before the diversion becomes operational.
 47. Whilst the new path surface seemed relatively even having been recently mown, parts of the existing definitive lines were quite bumpy where earth had been ramped for the scrambler course (and at point J was extremely difficult to walk). However, as I mentioned above at paragraph 12, I shall disregard these as 'temporary circumstances' for the purpose of comparing the present and proposed routes. Consequently, whilst there is the drainage issue along F-J, there is little to choose between the two routes that could not be remedied.
 48. What cannot be altered however is the gradient. The line F-J-K is, broadly speaking, the highest part of the paddock. Since it takes a shorter distance to reach the same height, section L-K has a steeper gradient than L-F (although LK appears broadly similar to L-J). According to HBPC, this is a significant difference.
 49. For Footpath 27, on the downhill walk the difference in slope may make little difference, despite the increase in length, but I agree that for many people the uphill climb from L to K (before turning towards J and F) could be more difficult than using the gentler gradient of L-F.
 50. As regards the width, it is not possible to make a direct comparison since the definitive statement does not record the extent of the existing footpath. The Order proposes to record the new routes as 2 metres wide in both cases and I accept that is probably appropriate for footpaths in this location.
 51. However, objectors pointed to the vegetation along the boundary beside the new route of Footpath 27, fearing that if not kept under control, this might encroach into the line of the highway and effectively narrow the width for public passage, especially if the footpath is eventually contained by a new fence along the south western side.
 52. I understand the concerns expressed and would be prepared to modify the Order to better define the position of the new route(s) in relation to the boundary fence to address this point.
 53. However, turning to the tests that must be applied here, I need to be satisfied that the new Footpath 25 (J-K-L) is substantially as convenient as the present route J-L. When I disregard the present surface difficulties preventing use of J-L, then I have no difficulty in accepting that the test is satisfied. When I

compare the present F-L with the alternative F-J together with the new route of Footpath 25 (J-K-L) then the steeper gradient and, to a lesser extent the increase in length, lead me to conclude that the diversion would be less convenient and for some people this would be substantially so.

Other considerations

54. Addressing the effect the diversion would have on the enjoyment of the two footpaths, the main concern raised by objectors focusses on the views from Footpath 27. Whilst walking from F to L, the longer range views downhill are splendid but are matched by those available from F-J⁶. It is the views uphill towards the village along L-F which are lost from the climb from L up to K. Consequently I agree that re-aligning Footpath 27 around the edge of the field would have a detrimental effect on the enjoyment of this path.
55. All the objectors expressed concern over future maintenance if the diversion proceeds. It is the responsibility of the landowner to ensure that access along a public right of way is not obstructed by growing crops⁷ or otherwise. Where agricultural land is involved, the landowner has a right to plough the soil if the public path cannot be reasonably avoided but the surface of the path must be adequately restored to ensure passage is not interrupted. A field-edge path cannot be disturbed in this way.
56. In some circumstances transferring a path to a field edge might offer some overall benefit for the public. Indeed the RA indicated that it had agreed to such diversions where reinstating the surface of a cross-field path had become a problem. Here, this raises a question over the highway authority's ability to adequately maintain both the surface and over-hanging vegetation if Footpaths 27 and 25 are diverted to the field edge.
57. Although Mr Page acknowledged ECC has a duty to maintain public paths within the County, both HBPC and the RA submitted that in reality the authority is only able to attend to around one third of its paths so that at most a field edge path might be cut once a year. This may not be a problem if Footpaths 25 and 27 remain unfenced and grazed by the McKennas' animals, but if the paths are enclosed then an annual cut would be unlikely to suffice. Further, the practicalities of cutting overhanging vegetation within a 2 metre-wide passage were highlighted.
58. I have no doubt that Mr McKenna's offer to attend to such matters is genuine, but in the longer term, if or when the property changes hands, there can be no such guarantee. Whilst I do not think the maintenance problems would be insurmountable, I recognise that the diversion could place a higher burden on ECC and therefore on the public purse.
59. One other matter that could affect public enjoyment relates specifically to Footpath 25 but indirectly to Footpath 27; at point K the proposed new route makes a 90 degree turn. That in itself is not a problem but here in this corner the footpath would be bordered on the field side by a mound of earth which is sufficiently high to obscure the vision of most people. In some locations this might be seen as a potential safety risk but none of those who spoke at the hearing considered this to be the case here in Helions Bumpstead. This had

⁶ Unless this section was to be hedged on the field-side in which case views may eventually be lost.

⁷ The provisions which apply to fields in which crops are grown do not apply to grass grown for pasture, silage or haymaking.

been an area where path users expressed serious concern for their safety whilst the scrambler bikes were active on the earth mounds but Mr McKenna explained that it had been his son who practised on the course and he now lives in America.

60. In drawing together my conclusions I have noted all the ECC policy references submitted by both the RA and HBPC, some being more applicable than others, and also the Design Manual for Roads and Bridges.
61. Whilst I find the loss of the uphill views from Footpath 27 a significantly detrimental factor to be weighed in the balance, I consider the effect of diverting Footpath 25 on public enjoyment is likely to be relatively slim.
62. Compensation issues are not relevant here since the applicant also owns the land over which both present and proposed routes pass. No adverse effects arising from the diversion on any of the land affected have been highlighted.
63. Aside from the difficulties for some people in walking up section L-K, no particular concerns have been raised as regards accessibility for all users. Nonetheless, being mindful of the requirements of the Equality Act 2010 I have considered the reasonable needs of people with a range of disabilities when assessing the relative convenience of the new routes.

Whether it is expedient to confirm the Order

64. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public.
65. I am satisfied that the statutory tests have been met in relation to the proposed diversion of Footpath 54. There are clear grounds for seeking the diversion and little opposition to the alternative route.
66. I find the case for realigning Footpaths 25 and 27 far less convincing with no substantive plans for managing the field so as to derive tangible benefits from the 'tidying' exercise. Balanced against the loss of views towards the village from Footpath 27 and mindful of the steeper gradient of the alternative, I am led to conclude that the benefits to the applicant do not outweigh the disadvantages to the public. However given the limited opposition to diversion of Footpath 25, I consider the balance lies in favour of its confirmation.
67. Overall, taking into account all relevant factors and having addressed the statutory tests in section 119 of the 1980 Act, I conclude it would be expedient to confirm the parts of the Order that relate to Footpaths 25 and 54 but not to those which to divert Footpath 27. I therefore intend to confirm the Order with modifications to remove references to Footpath 27.

Other matters

68. At the hearing I invited Mr Turner to set out any other options that were being suggested by HBPC as a solution here. Mr McKenna expressed some surprise at this since he said he had not been invited to any negotiations with the Parish Council about a possible compromise. These alternative proposals included the closure of Footpath 25 (in return for the retention of Footpath 27) but this is a proposal which goes beyond the scope of any modification I can make to this Order and I have not considered it further. Any other possible rationalisation

of the network in this area will be a matter for discussion with adjacent landowners, HBPC and ECC.

Conclusion

69. Having regard to the above and all other matters raised in the written representations and at the hearing, I conclude the Order should be confirmed subject to the modification referred to in paragraph 67 above to exclude Footpath 27 from the diversion.

Formal Decision

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

- In the Order titles, delete (Footpath No.) "27" wherever it appears;
- In Article 1 of the Order, delete (Footpath No.) "27"
- In Parts 1 and 2 of the Order Schedule, delete entries for Footpath 27;
- On the Order map, delete section F-J and indicate section F-L as "unaffected", and in the key, delete "F-L" from "Routes to Close" and delete "F-J" from "New Routes".

Sue Arnott

Inspector

APPEARANCES

In support of the Order

Mr L Page	Definitive Map Officer, Essex CC
Mr A Jenkins	Area Rights of Way Officer, Essex CC
Mr O McKenna	Applicant

Opposing the Order

Mr N Turner	Representing Helions Bumpstead Parish Council (statutory objector), The Parish Property Trust, The Parochial Church Council and The Cricket Club
Mrs J Catchesides	Former Chairman of Helions Bumpstead Parish Council
Ms K Evans	Braintree District Joint Footpath Secretary, representing the Ramblers' Association (statutory objector)
Mr N Nicholson	Representing Mrs D M Nicholson (statutory objector)
Ms A Meldrum	Statutory objector

DOCUMENTS

1. Copies of statutory notices and certification
2. Copy of the 3 original statutory objections
3. Additional statutory objection submitted following re-advertisement
4. Essex County Council's Statement of Grounds for making the Order together with bundle of accompanying documents and comments on the objections
5. Statement of case submitted by Mr O McKenna
6. Statement of case submitted by Mr A Evans on behalf of Helions Bumpstead Parish Council
7. Statement of case submitted by Mrs K Evans on behalf of the Ramblers' Association

Submitted at the hearing

8. Copy of letter from Ms L West sent by email to the Planning Inspectorate on 26 June 2016
9. Copy of Helions Bumpstead Parish Council draft minute 94/16
10. Letter from Ms F Simmons to Chair of Helions Bumpstead Parish Council dated 21 June 2016
11. Copy of notice erected on existing line of Footpath 54 in March 2014



Diversion of Footpaths 25, 27 and 54
 Helions Bumpstead
 Routes to Close D-E, ~~F-E~~ & J-L ———
 New Routes F-G, ~~F-J~~ & J-K-L ———
 Unaffected
 Definitive Map Sheet TL 64 SE
 Scale 1: 1500

MAP NOT TO
ORIGINAL SCALE



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