
Order Decisions

Site visit made on 17 January 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 31 January 2017

Order A Ref: FPS/Y3940/4/16

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Wiltshire Council Malmesbury St Paul Without (part), 16 (part) and 17 (part) and Lea and Cleverton 1A (part) Diversion Order and Definitive Map and Statement Modification Order 2015.
- The Order is dated 1 December 2015 and proposes to divert the public rights of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversions as authorised by the Order come into force.
- There were 3 objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Order B Ref: FPS/Y3940/3/4

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Wiltshire Council Malmesbury Without 15 Extinguishment and Definitive Map and Statement Modification Order 2015.
- The Order is dated 1 December 2015 and proposes to extinguish a public right of way over land situated at Southfield Farm, Malmesbury St Paul Without as shown on the Order Map and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the stopping up as authorised by the Order come into force.
- There were 3 objections outstanding when Wiltshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I undertook an unaccompanied site visit on 17 January 2017 when I was able to walk across the weir footbridge along Malmesbury Without 17 (part) ('footpath 17'), observing the existing route of Lea and Cleverton 1A ('footpath 1A') and across to Southfield Farm and the route of Malmesbury Without 15 ('footpath 15') before heading northwards to Milbourne along Malmesbury Without 16 (part) ('footpath 16') before returning back along both the proposed route and Malmesbury Without 13 ('footpath 13') to return to the footbridge over the River Avon close to the weir.
 2. Having made the Orders, Wiltshire Council (the Order Making Authority or 'OMA') has since taken a neutral stance whilst remaining satisfied that the Order meets the required tests.
-

Written representation procedure

3. The parties agreed to the use of the written representation procedure to determine these Orders. There are no rules governing this procedure, but an informal procedure has been established and is set out in the guidance booklet produced by the Planning Inspectorate¹. That procedure requires the submission of statements of case by the relevant parties, followed by the submission of comments on those statements after they have been exchanged.

Main Issues

4. Order A is made in the interests of the owners of the land crossed by the footpaths, and of the public. 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 owners of the land that the footpaths in question should be diverted and that the new footpaths will not be substantially less convenient to the public. I must also consider whether the proposed diversions satisfy the test set out in section 119(2) which states that a diversion order must not alter the termination of a path otherwise than to another point on the same highway, or a highway connected to it and which is substantially as convenient to the public. On the first element of section 119(2), I agree with the Council that this test is met and I do not refer to this hereon in again.
5. If I am satisfied on the above points, I must then consider whether it is expedient to confirm the Order having regard to the effect of the diversion on public enjoyment of each path as a whole, the effect which the coming into operation of the Order would have with respect to other land served by the existing path and the effect which any new path created by the Order would have in respect of the land over which it is so created and any land held with it, having regard to compensation.
6. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan (ROWIP) prepared by the local authority on whose area includes land over which the footpaths run. The Council has provided extracts of the ROWIP. These extracts are not particularly material to either of the Orders. Consequently, I have not considered this issue further.
7. Order B is made under Section 118 of the 1980 Act the requirements of which are that, before confirming this Order, I must be satisfied that it is expedient that the footpath should be stopped having regard to:
 - the extent that it appears that the right of way would, apart from the Order, be likely to be used by the public, and
 - the effect, which the extinguishment of the right of way would have, as respects land served by the path, account being taken of the provisions as to compensation.

Reasons

Order A

Whether it is expedient in the interests of the owners of the land or the public that the footpaths in question should be diverted

¹ Guidance of procedures for considering objections to the Definitive Map and Public Path Orders in England – edition May 2016.

Footpaths 17 and 1A

8. The existing route of footpath 17 meets footpath 1A at the Parish boundary and former crossing point over the River Avon. The proposed diversion would take the footpath over the new replacement footbridge and would provide a more direct link between 17 and 1A as the linked footpaths. Despite objections being raised against the principle of footpath diversions in the Order, there is no specific objection to this element. The footbridge is modern, safe and provides the only suitable crossing point at this point of the river.
9. I consider that the diversion of the route away from the river at a point close to the dangers posed by the weir would have benefits for those working on the local farms and the public using the local public rights of way network.

Footpaths 13 and 16

10. The existing footpath 13 leads in a straight line north-westwards from the access lane serving Southfield Farm before reaching a pedestrian gate in the south-west corner of the field and on past the southern boundary of the existing sewage treatment plant towards Malmesbury. Footpath 16 heads in a northerly direction from the Farm's access lane towards the hamlet of Milburn. Both footpaths would be diverted around the edges of the same field.
11. The Order is made by the Council following an application by Sustrans as part of a wider regeneration initiative but more specifically on behalf of the landowner who wishes to address concerns relating to health and safety matters arising from the existing cross-field paths where the field is uneven and subject to ploughing at times.
12. Having regard to the above, I am satisfied for the reasons given that it is expedient in the interests of the landowner that both footpaths should be diverted

Whether the new footpaths will not be substantially less convenient to the public

Footpaths 17 and 1A

13. The present line of footpath 17 where it meets footpath 1A lies within the river bed; clearly, the proposed route taking it over the new footbridge would be more convenient to the public. It would also be slightly shorter. I am satisfied that the diverted route would not be substantially less convenient to the public.

Footpaths 13 and 16

14. Although the proposed diversion from the northern end where the diversion would begin to a point on the existing Malmesbury St Paul 15 to the south of Southfield Farm would be approximately 200 metres longer than the existing route along the lines of Footpath 13 and Footpath 16, it would follow a definable route along the edges of the field and away from both the ploughed and cropping area and the entrance into the busy farmyard.
15. The existing routes do not follow easily identifiable routes and there is substantial scope for deviation. The proposed routes would be easier to navigate and the topography and hedgerow boundaries would allow easy identification of the routes, which are unlike the existing routes that traverse sloping ground. Despite the diverted routes being longer than the existing routes and, as they lay within a countryside setting, this would not be an

impediment and I am therefore satisfied that they would not be substantially less convenient to the public.

The effect the diversions would have on public enjoyment of the paths as a whole

16. There would be less than substantial distance and visual differences between the existing and diverted routes.
17. The diverted routes of footpaths 17 and 1A would enhance public enjoyment at the connecting point at the footbridge allowing the public to cross the Avon close to its weir.
18. The existing route of footpath 16 as it meets Malmesbury St Paul 15 essentially forms part of the access track into the farmyard at Southfield Farm. At this point, the predominant views are of a working farm and a fairly steep ploughed field. It is only as this route heads northwards and well into the undulating field that long distance views of Malmesbury and its abbey and church steeple enter the field of vision.
19. An objector opines that the diverted routes would involve a loss of amenity to walkers and path users. However, no further evidence is provided. From my site visit, it is appreciated that the diverted route would follow the line of the hedgerow and as the diverted downhill route of footpath 16 heads southwards from the direction of Milburn, long distance views of the iconic landmarks of Malmesbury are lost for short lengths. However, the same is true of the present line as the folds in the landscape also reduce these particular vistas.
20. One of the objectors also raised the issue of the increased walking distances involved in the diverted route hugging the line of the field hedgerow boundaries. However, the increased distances are relatively minimal and would not detract from the enjoyment of the route.
21. An objector also referred to the rutting of sections of the diverted route. My site visit coincided with a period of heavy rain and snowmelt. Rutting was not particularly noticeable. The Order provides for a 2 metre minimum footpath width, which would allow some flexibility for walkers.
22. Overall, the diverted routes of footpaths 1A and 17 would positively enhance the experience of walkers at a particularly attractive water setting whilst the diverted routes of footpaths 13 and 16 would take walkers away from relatively intensive agricultural activity areas to more definable routes that are comparatively attractive in terms of landscape quality and long distance vistas. Consequently, I am satisfied that the diversions would not have a detrimental effect on the public enjoyment of the paths as a whole.

The effect that 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 regard to the provision for compensation.

23. No adverse effects on the land affected by the Order routes have been identified and issues regarding compensation have been resolved between the OMA and the landowner.

Conclusion regarding Order A

24. Having regard to the above reasons and to all other matters raised in the written representations, I conclude that the proposal satisfies the criteria set out in section 119 of the 1980 Act and that the Order should be confirmed.

Order B

The likely use of Footpath 15 (part) by the public

25. Footpath 15 is currently a cul de sac terminating at the farmyard at Southfield Farm. If the Order is confirmed, it will terminate at Point I reducing its length by some 195 metres. This entire section is a tarmac road, some 4.5 metres in width that serves the farm only. Footpath users leave the road at a point at the farm entrance to connect with footpath 16 before heading northwards. The character of footpath 15 beyond the stile onto footpath 16 is that of a private road leading to a private property. This is the main access to Southfield Farm and is much used by heavy farm vehicles and equipment with possibly some animal movement.
26. There is no evidence on the ground that the footpath beyond its connection with footpath 16 is used by the public and there would be no apparent reason why walkers would wish to continue into the farmyard only to return along the same route.
27. There is no feature of public interest beyond Point G. Walkers would have no other reason to proceed beyond Point I as a result of confirmation of Order A. In my view, it is unlikely that The Order route would be used by the public to any significant extent following the confirmation of Order A.

The effect of extinguishment on land served by the footpath and compensation issues

28. There would not appear to be any land to which access would be lost as a result of the proposed extinguishment and compensation issues do not arise in this case given the agreement between the OMA and the landowner.

Conclusion regarding Order B

29. Having regard to the above reasons and to all other matters raised in the written representations, I conclude that the proposal satisfies the criteria set out in section 118 of the 1980 Act and that the Order should be confirmed.

Formal Decision:

Order A

30. The Order is confirmed.

Order B

30. The Order is confirmed.

Gareth W Thomas

INSPECTOR

DIVERSION OF MALW15, 16, 17 (PARTS), LECL1A (PART) ORDER PLAN
 PATHS TO BE EXTINGUISHED: A — B C — D E — G H — I
 PATHS TO BE CREATED: A — B D — F E — F
 UNAFFECTED PATHS: x-x-x-

