
Order Decisions

Site visit made on 30 June 2015

by Alan Beckett BA MSc MIPROW

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

Decision date: 7 August 2015

Order Ref: FPS/H3700/3/20 ('Order A')

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the Warwickshire County Council (Part of footpath T118 and Footpath T119, Shuttington) Public Path Extinguishment Order 2013.
- The Order is dated 17 October 2013 and proposes to extinguish the public rights of way shown on the Order plan and described in the Order Schedule.
- There were no objections outstanding when Warwickshire 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.

Order Ref: FPS/H3700/6/17 ('Order B')

- This Order is made under Section 26 of the Highways Act 1980 (the 1980 Act) and is known as the Warwickshire County Council (Footpaths T184 and T185 Shuttington) Public Path Creation Order 2013.
- The Order is dated 17 October 2013 and proposes to create the public rights of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection and 6 representations outstanding when Warwickshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision.

Order Ref: FPS/H3700/4/90 ('Order C')

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Warwickshire County Council (Part of Footpath T118 Shuttington) Public Path Diversion Order 2013.
- The Order is dated 17 October 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection and five representations outstanding when Warwickshire 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.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Orders. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the routes at issue on Tuesday 30 June 2015.

The Main Issues

Order A

2. Section 118 (2) of the 1980 Act requires that before confirming the Order I should be satisfied that it is expedient to stop up the footpaths in question having regard to the extent that it appears that they would, apart from the Order, be likely to be used by the public; and that I should consider the effect which the extinguishment of the rights of way would have as respects land served by the path, account being taken of the provisions as to compensation.
3. Section 118 (5) provides that where proceedings preliminary to the confirmation of a public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation or diversion order (as is the case here) then in considering the likely extent of use of the path proposed to be extinguished, regard may be had to the extent to which the creation or diversion order would provide an alternative path.

Order B

4. Section 26 (1) of the 1980 Act requires that the factors to be considered in regard to the creation of a footpath are whether there is a need for a footpath and that it is expedient to create that footpath having regard to:
 - (a) the extent to which the footpath would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act.

Order C

5. The Order is made in the interests of the owners of the land crossed by the current line of footpath T118 and in the interests of the public. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
 - (a) it is expedient, in the interests of the owners of the land or of the public that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) on public enjoyment of the path as a whole; and
 - ii) the effect the coming into operation of the Order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.

Orders A, B and C

6. In determining whether or not to confirm the Orders, sections 26 (3), 118 (6A) and 119 (6A) of the 1980 Act require that I should give consideration to any material provision of a rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.

7. Furthermore, I need to give consideration to what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and natural beauty of the area³.

Reasons

Order A

The extent to which the footpaths would, apart from the Order, be likely to be used by the public

8. The section of footpath T118 at issue commences on a track off Robey's Lane and runs in a north-easterly direction to Linden Lane. The footpath cannot be walked as a significant part of it is covered by the water of Mill Pool. I understand that Mill Pool was created as a result of water from the River Anker collecting in an area of mining subsidence and has been a feature of the landscape since the 1930s or 1940s. Footpath T119 is a spur path leading from footpath T118 near the southern bank of Mill Pool to the track off Robey's Lane.
9. Other than a section of the path from Linden Lane to the northern edge of Mill Pool and part of T118 and T119 from the southern end of the pool it was not possible to walk the line of either footpath. The southern sections of T118 and T119 run over an arable field which at the time of my site visit contained a growing crop. The lines of the footpaths were not evident on the ground and it appeared to me that the public had not attempted to tread out the path anew following ploughing nor had any attempt been made by the occupier to re-define the route through the growing crop.
10. No evidence of the use of either footpath at issue has been submitted although the authors of some of the written representations made state that they have used a route not dissimilar to that shown in Order B as an alternative means of access to the track off Robey's Lane for the purposes of birdwatching in the vicinity of the pool⁴. The representations received demonstrate that there is some desire on behalf of members of the public for a means of access between Linden Lane and Robey's Lane for recreational purposes.
11. In accordance with the provisions of section 118 (6) of the 1980 Act, I have disregarded the obstructions currently found on the path and have considered the matter as if the footpath were open and available and free from the restrictions present on site. Mill Pool has the appearance of a permanent feature having been present for more than half a century and is likely to endure into the future. However, if sufficient capital was available and the necessary consents were obtained, the pool could be bridged and the pool can therefore be regarded as a temporary obstruction.
12. If the pool was not present it is likely that there would be some use of the paths. Whether that use would be extensive is difficult to determine as those respondents who provided evidence of the demand for a path appear to require access primarily for the purpose of bird watching. If the pool was not present, then it is likely that the wetland and the bird life (and the birdwatchers) it attracts would not be present either. I note that the Parish Council supports

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006

³ Section 11 of the Countryside Act 1968

⁴ Mill Pool is part of the Alvecote Pools Site of Special Scientific Interest an extensive area of wetland in Warwickshire which supports a regionally important bird community

the creation of a useable route between Shuttington and Alvecote for parishioners wishing to walk between the villages. On balance, I consider that if the obstructions currently found on the paths were not present there would be some use of the paths but that use would not be extensive.

13. Given that the pool is likely to endure into the future, and that there will be members of the public who wish to access the southern side of the pool for the purposes of bird watching, I consider that the paths specified in Order B would provide a reasonable alternative to the two footpaths proposed to be extinguished by Order A.

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

14. There is no evidence before me from which I could conclude that extinguishment of the footpath in question in the Order would have any adverse effect in respect of this requirement of Section 118 of the 1980 Act.

Conclusion

15. I conclude that the requirements of section 118 (2) which are set out in paragraph 2 above are met in respect of this Order and that it is therefore expedient that it be confirmed.

Order B

Whether there is a need for the footpaths

16. The Council submits that the footpaths proposed to be created are needed as replacements and alternatives for those proposed to be extinguished by Order A. The issue of those paths obstructed by Mill Pool has a long history and previous attempts to extinguish T118 and T119 without alternative paths being made available have met with opposition from the Parish and District Councils and from the Ramblers' Association. The Parish Council is committed to the establishment of an alternative footpath link between Alvecote and Shuttington and between Shuttington and Pooley Country Park and fully supports the confirmation of the Orders. As Order A is to be confirmed I accept that there is a need for the footpaths shown in Order B which will provide suitable alternatives.

Whether it is expedient to create the footpaths having regard to

(a) the extent to which their creation would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area

17. Although it would be possible for pedestrians to travel between Linden Lane and Robey's Lane using the made up footways at the side of the carriageway, those made up footways would offer an inferior substitute for the footpaths being extinguished. The paths which would be created by Order B would offer recreational walkers open views of the river and pool along with the opportunity to observe the wildlife in the vicinity of the pool.
18. The importance to some residents of the ability to observe and study the bird life on and around Mill Pool is clearly stated in the representations made with regard to the Orders. The respondents describe the frequency of the visits they

make to the site to observe and record bird populations present; the respondents also comment that they have habitually used the routes similar to those to be created for a number of years as alternatives to footpaths T118 and T119.

19. I consider that the creation of the footpaths would enable residents in Alvecote and Shuttington and other recreational walkers to travel between the villages on a route similar in character to those which will be extinguished by Order A. Currently there is no such route available for residents to use and I consider that the creation of the paths will add to the convenience of those resident in the area. I consider that for those who wish to observe, study and record bird life on and around Mill Pool the new footpaths will be of benefit as they will enable such activities to continue.

(b) the effect which the creation of the footpath would have on the rights of persons interested in the land, taking account of the provisions as to compensation in Section 28 of the 1980 Act

T184

20. The land crossed by T184 is registered to the SLA Property Company which I understand is a company that holds commercial and other property on behalf of individual pension investors; no objections to the proposed creation have been received from the registered owner. An objection has been made by a Mr Taylor who asserts that he is the owner of the land and occupies the land via the Mercia Angling Club. Despite requests to do so being made by the Council, Mr Taylor has failed to provide evidence to substantiate his assertions to ownership of the land or that he is in a position to grant a licence for the use of it.
21. The proposed path would run through a strip of woodland adjacent to Shuttington Road and then cross an area of grassland to emerge on Shuttington Road towards the eastern end of the bridge over the Anker. No objection to the creation of T184 has been made by the registered owner or the claimed occupier and the rights of those parties do not appear to be adversely affected by the proposed creation.
22. If the creation of the footpath is considered to have a demonstrable negative effect, then compensation for damage or disturbance in the enjoyment of the land may be payable under the provisions of section 28 of the 1980 Act. It would be for those who claim that their interest in the land has been diminished to demonstrate to the Council that this was the case.

T185

23. The proposed path would in part run over land registered to the SLA Property Company and in part over land registered to Mr & Mrs Stephenson. No objection to the creation has been received from the SLA Property Company. Mr & Mrs Stephenson do not object to the principle of the proposed creation but have requested that consideration be given to creating the path around the field edge between point L on the Order plan and the point where the path is shown to enter the former sewage works site. Mr & Mrs Stephenson submit that this modification would limit the impact of the footpath on their arable field and could be placed 3 metres from the river bank so as to be sufficiently far

- from the river to not cause adverse disturbance to anglers or to bird life inhabiting the river.
24. The Council had considered the proposed modification prior to making the Order however, it was considered that the field corner was subject to flooding and the collection of flood debris which would prevent use of the path at certain times of the year. Subsequent to their purchase of the land, Mr and Mrs Stephenson have undertaken remedial works in their field and submit that the problems which were present have now been alleviated; the Council acknowledge this to be the case. The Council support the confirmation of the Order but have adopted a neutral stance as to whether it should be confirmed with the modification requested by Mr & Mrs Stephenson.
25. I saw from my site visit that the proposed route would cross Mr & Mrs Stephenson's arable field in two places. With regard to having to re-instate the proposed path following ploughing, the owners would be no more inconvenienced by the proposed path than they are currently by the existence of T118 and T119. However, I also noted from my site visit that the steps down to the field from the road and the path on the headland appeared to be currently in use as a means of access to the fishing pegs on the bank of the river; I consider it likely that non-anglers use this route as well, particularly when there is a growing crop in the field.
26. I visited the site on what was a very warm summer afternoon when the headland path was firm and dry underfoot. The Council have visited the site following a period of heavy rainfall and observed that the corner of the field was not subject to flooding following Mr & Mrs Stephenson's works. On the basis of the evidence available to me I consider that the headland path is likely to be available for use at all times and that the modification proposed by Mr & Mrs Stephenson is not unreasonable.
27. The Council have re-consulted all statutory parties regarding Mr & Mrs Stephenson's submission. Natural England confirmed that they had no objection to the proposed modified route; no objection was received from the registered owner of the riverbank although Mr Taylor considered that a headland path would not be in his interests. Despite a request from the Council to clarify or expand upon how his interest would be affected, Mr Taylor has not provided any further information regarding this aspect of Order B.
28. Although the proposed modification would add approximately 90 metres to a journey along the proposed path with a commensurate increase in journey times, I do not consider that users of the path would be unduly inconvenienced by the route proposed by Mr & Mrs Stephenson. There is no evidence before me from which it could be concluded that a headland path would have an adverse impact upon the nature conservation interest of the Alvecote Pools SSSI or upon those who use the headland route to access the fishing pegs on the southern bank of the river. I conclude that the creation of footpath T185 with the headland modification is unlikely to have an adverse impact upon those with an interest in the land which the created path will cross.
29. If the creation of the footpaths does have a demonstrable negative effect, then compensation for damage or disturbance in the enjoyment of the land may be payable under the provisions of section 28 of the 1980 Act. It would be for those who claim that their interest in the land has been diminished to demonstrate to the Council that this was the case.

Conclusion

30. I conclude that the requirements of section 26 (1) which are set out in paragraph 4 above are met in respect of this Order and that it is therefore expedient that it be proposed for confirmation with modifications.

Order C

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

31. The Order was made following an application by UK Coal Mining Ltd to divert footpath 118 from its current line to the proposed route around the northern and western edges of Shuttington Pool. At around the same time as the Order was made UK Coal Mining Ltd disposed of the land and has no further interest in it. Registered ownership of Shuttington Pool lies with the SLA Property Company with the land to the north of point D being owned by Mr Arnold.
32. The Council submit that as the footpath is obstructed by Shuttington Pool (and has been so obstructed since mining subsidence caused the area to flood in the 1950s) it would be in the current owner's interests for it to be diverted as the current owner is likely to be liable for the costs of restoring the footpath and overcoming the man-made obstruction created by a previous owners mining operations.
33. The view of the registered owner is unknown as no response has been made by SLA to the proposed diversion. However, I consider that it would not be unreasonable to conclude that the diversion would be in the current owner's interests for the reasons given by the Council.
34. Mr Taylor asserts that he is the occupier of the land although such claims remain unsubstantiated. Notices posted around Shuttington Pool declare that it is a water of the Mercia Angling Club; whilst Mr Taylor may have some connection with that club, it is not known in what capacity his objection has been made. Mr Taylor may or may not be an official of the Mercia Angling Club; the position he may or may not hold within that club is unclear from the copies of his email communications regarding this matter.
35. Mr Taylor states that the proposed diversion is not in his interests as pedestrians walking round the edge of the pool disturb anglers and the wildlife found there; dogs bite anglers and foul the lakeside and fishing pegs, chase the waterfowl and disturb other wildlife.
36. Having viewed the site I note that with the exception of those points where fishing pegs are located much of the pool is screened from view from the path by vegetation; the level of disturbance to wildlife caused by passing pedestrians is therefore likely to be minimal. I also consider that the current positioning of the fishing pegs at some distance from the path is likely to reduce any possible conflict between anglers and pedestrians.
37. In any event, those members of the public attempting to walk T118 and who find it obstructed by Shuttington Pool can legitimately deviate around the obstruction whilst remaining on land in the same ownership. From my observations on site and from the written representations made by visitors to the site, the public appears to be undertaking just such a diversion. Given that members of the public currently make use of a path around Shuttington Pool

and are likely to continue to do so whilst footpath 118 is obstructed, it is unlikely that levels of disturbance arising from the permanent diversion of the path would be any greater than those already present.

38. The proposed diversion would provide a solution to the problem of footpath T118 being obstructed by flooding. I am satisfied that the diversion of T118 is in the interests of the public as the diversion would obviate the obstruction caused by Shuttington Pool and provide the public with a useable route which would link Shuttington and Linden Lane.
39. If I am mistaken that the diversion is not contrary to the interests of the owner or the occupier of the land then compensation for damage or disturbance in the enjoyment of the land may be payable under the provisions of section 28 of the 1980 Act. It would be for those who claim that their interest in the land has been diminished to demonstrate to the Council that this was the case.
40. Two other parts of footpath T118 are to be diverted. The line C – D has been proposed by Mr Arnold who wishes the path to be as close to the field boundary hedge as possible to reduce the amount of grazing land lost if a temporary fence was required for the management of his livestock. The proposed diversion would also remove the need to bridge the ditch on the eastern side of the boundary hedge or to make for a gap to made in the hedge at C. Given that the proposed line has been suggested by Mr Arnold, I consider that the diversion is in his interests.
41. The remaining section of footpath T118 coincides with an access track which leads to a domestic garden. The proposed diversion would result in the path following a parallel course outwith the garden and would result in greater privacy for the owners and occupiers. I consider that the proposed diversion of E – F would be in the interests of the owner of the land currently crossed by the path.
42. It follows that I conclude that it is expedient in the interests of the owners of the land crossed by footpath T118 and the public that the footpath should be diverted.

Whether the proposed terminal point of footpath 118 will be substantially as convenient as the existing terminal point of the footpath.

43. In cases where the diversion of a path results in the terminal point of the path being changed, section 119 (2) requires that consideration be given to whether the proposed terminal point would be substantially as convenient as the existing terminal point. This question is complicated by the fact that part of footpath 118 is proposed to be diverted and part is proposed to be extinguished with an alternative path being created. Save for the effect of the extinguishment and creation Orders, footpath 118 would terminate at point Y on the plan attached to Order A.
44. However, the proposed extinguishment and creation Orders have been considered above and as I have concluded that those Orders should be confirmed, the terminal point of footpath 118 becomes point A on Linden Lane and it is this terminal point which the proposed terminal point at H should be compared.
45. For those walkers wishing to travel between Shuttington and Alvecote using the public footpath network in the area, point H is likely to be more convenient

than point A as it is closer to footpath T184 which is the next available path. A journey between point H and footpath T184 requires a walk along the made up footway on the south side of Shuttington Road. I consider that for those undertaking a walk between the villages or those engaged in a longer recreational walk in the area, the proposed terminal point at H will be substantially as convenient as the path's existing terminal point.

Whether the proposed route would be substantially less convenient to the public

46. The proposed path will provide the public with a useable route with connectivity with the remaining footpath network in the area. As a useable route between villages, the proposed path will be more convenient than the section of footpath T118 obstructed by Shuttington Pool.
47. The land crossed by the proposed path is not dissimilar to that crossed by the current route in terms of gradient, surface condition and width. Between points E and D the proposed path will descend the same slope that the current path runs over and will run at the edge of a similar pasture field. With regard to points E – F, there is no significant change in direction or path furniture. In terms of gradient and surface, the proposed path is substantially as convenient as the existing path.
48. The proposed path will require the user to negotiate two boundary crossings at points D and H whereas the current path requires the crossing of three boundaries; at C, a point east of D and at A. A kissing gate is currently present at D and it is proposed to install a further kissing gate at H. The reduction in the number of boundary crossings and the installation of path furniture which is the least restrictive for pedestrians whilst maintaining a stock-proof boundary is likely to be more convenient for some users of the path.
49. The proposed route C - D – H is longer than the existing route C – B – A, however I consider that any inconvenience arising from an increase in journey distances and times is likely to be mitigated by the greater connectivity with the remaining footpath in the area.
50. For the above reasons, I do not consider that the proposed diversion would be substantially less convenient for members of the public wishing to undertake a journey along footpath T118.

Whether it is expedient to confirm the Order having regard to:

The effect the diversion would have on public enjoyment of the path as a whole

51. The proposed diversion of E – F would have little or no impact upon the views of the surrounding countryside or other features of interest available from this part of footpath T118. From point C there are extensive views of the countryside to the south and of the immediate countryside surrounding Shuttington Pool; similar views will be available from the proposed path. Shuttington Pool is an important feature in the vicinity of the path; the diversion route will maintain access to and around part of the pool and will provide walkers with the opportunity to observe the birdlife present on site as the current path would do if it were available for use.

52. I conclude that the enjoyment of those who seek pleasure from informal recreation on paths such as footpath T118 would not be diminished as a result of the proposed diversion.

The effect the coming into operation of the Order would have with respect to the land served by the existing path

53. There is no evidence before me that the Order would have, in this respect, any effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act.

The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

54. There is no evidence before me that the proposed diversion would have any detrimental impact upon the land over which footpath T118 will run. The proposed route around the northern and western sides of Shuttington Pool runs over a path which (with the exception of the exit at H) is currently in use by those diverting away from the obstructed line of footpath T118. In such circumstances, it is likely that any disturbance or damage to the owner or occupier which may arise as a result of the diversion is already present on the land.

55. I note that Mr Taylor has indicated that he will be seeking compensation if the Order is confirmed. If a claim for compensation does arise, it will be a matter for the Council to address.

Summary

56. I conclude that it is expedient to confirm the Order having taking into account the effect the diversion would have on public enjoyment of the path as a whole, on the land served by the existing and proposed paths and on any land held with it.

Consideration given to the provisions of a Rights of Way Improvement Plan (ROWIP)

57. The Council's Rights of Way Improvement Plan draws broad strategic conclusions to identify improvements to the rights of way network within the county. The proposed extinguishments, creations and diversion appears to be compatible with the material provisions of the ROWIP and in particular with regard to policies RW5c (legal widths of rights of way) and policy RW1e (obstructions to rights of way).

The impact upon forestry, agriculture, nature conservation and natural beauty

58. There is no evidence before me to suggest that the confirmation of the diversion, creation and extinguishment Orders would have any adverse impact in relation to forestry, agriculture, biodiversity or the natural beauty of the countryside. Part of footpath T118 currently crosses land which is designated as a Site of Special Scientific Interest (SSSI). Footpath T118 currently bisects both Shuttington and Mill Pools and the proposed diversion, creation and extinguishment Orders would re-configure the footpath network to locations where disturbance to bird life is likely to be minimised.

Conclusion

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

Formal Decisions

Order A

60. I confirm the Order.

Order B

61. I proposed to confirm the Order subject to the following modifications:

(a) In the Order schedule replace the description of footpath T185 with the following:

“From Point L on the Shuttington Road (grid reference 42481 30507), running generally north-east for approximately 30 metres to Point L¹, then generally south-east for approximately 150 metres (at a distance of 3 metres from the southern bank of the River Anker) to Point L² then generally south-west for approximately 70 metres to Point L³ then generally south-east for approximately 350 metres to point M (grid reference 42512 30464), then generally south-west for approximately 225 metres to Point N on Robey’s Lane (grid reference 42500 30446) as shown on the Order plan.”

(b) In the Order plan, show the proposed modified route by means of a bold broken line between points L1, L2 and L3; amend the key to show the distance of L – M – N would be 825 metres.

62. Since the Order as proposed to be confirmed would affect land not affected by the Order as submitted, I am required by virtue of paragraph 2(3) of Schedule 6 to the 1980 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modification. A letter will be sent in connection with the advertisement of the notice and the deposit of the associated documents to all persons to whom this Order Decision has been sent.

Order C

63. I confirm the Order.

Alan Beckett

Inspector