

Order Decision

Site visit made 15 June 2016

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 29 June 2016

Order Ref: FPS/Q4245/5/1

- This Order is made under Section 257 of the Town and Country Planning Act 1990. It is known as The Borough of Trafford (Footpath at Denesway and Moss Lane, Sale) Public Path Stopping up Order 2015.
- The Order is dated 1 May 2015 and proposes to stop up the unrecorded footpath running alongside the boundary fence of No. 101, Moss Lane, Sale, as shown in the Order map and described in the Order Schedule.
- There were twelve objections and representations outstanding when Trafford Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Preliminary Matters

The statutory power

1. The Ramblers suggested that the Order should have been made under section 247 of the Town and Country Planning Act 1990 ("the 1990 Act"), rather than section 257, as 5 metres of the route from point A¹ runs alongside a carriageway. Section 247 of the 1990 Act relates specifically to '*Highways affected by development*'.
2. Trafford Council, the order-making authority ("the OMA"), indicate that the Local Highway Authority ("the LHA") have confirmed that the Order route is not recorded on the Definitive Map and Statement ("the DMS") for the area. The LHA did not consider there to be any public vehicular rights over the route, or any part thereof. Denesway, the short section of 'road' off Moss Lane/Cecil Avenue, was said only to serve the private vehicular access to number 101 Moss Lane.
3. The Order route is not recorded on the DMS and I am not aware of any claim to record rights either on foot or with vehicle. Denesway is separated from the recorded and maintained public carriageway by a line of setts across the entrance. It obviously provides vehicular access to 101 Moss Lane but without any continuation appears unlikely to be in general public use with vehicles.
4. From the evidence available I consider that section 257 is the appropriate statutory power in this instance.

¹ The Order route is shown between points A and B on the Order map

Order notice

5. The on-site Order notice was apparently only present for around 10 of the 28 day notice period, due to it being ripped off 7 times by persons unknown. Clearly once removed it was replaced. Although it has been suggested that there may have been members of the public who did not see it, and therefore were unable to object, there were a relatively large number of objections, some of which were later withdrawn.
6. I consider that the notice period was sufficient to meet the requirements of the statute and ensure that there was no prejudice to the public. I am satisfied that there is no need for further advertisement of this Order.

The alignment

7. As the Order relates to an unrecorded route it seems that there has been some confusion as to the intention of it. The Order route runs directly alongside the boundary gate and fence of 101 Moss Lane from Denesway to join Sale Footpath 26 ("FP26"). FP26 is a maintained tarmac path with street lighting and signed as a footpath from Cecil Avenue.
8. The area crossed by the Order route is overgrown, with no indication of recent use. However, immediately to the east of this is a clearly used and worn path, partly surfaced, although not obviously maintained recently. This also provides access between Denesway and FP26. It is also not recorded on the DMS and I have not been made aware of any claim to record public rights here.
9. The Order does not have any impact upon this eastern route. Objections from some individuals were withdrawn once they understood that there would be no interruption to passage on the 'well-trodden path'.

Procedural Matters

10. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.

Main Issues

11. The Order was made because it appeared to the OMA that it was necessary to stop up the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
12. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to stop up the footpath in question to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
13. Even if I were to find it necessary to stop up the path to allow implementation of the permission my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits or disadvantages of the proposed stopping up 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 it.

Reasons

Whether it is necessary to stop up the footpath to enable development to be carried out

14. The relevant permission is for the "*Change of use of open land to form a private garden area associated with dwellinghouse, and erection of 2 m high fencing and vehicular access gates.*" The permission was granted on 26 February 2014, planning application number 82033/FULL/2013.
15. I am satisfied that the planning permission directly relates to the land crossed by the Order route. This land is now within the ownership of 101 Moss Lane, albeit currently outside the physical property boundary formed by the existing fence². The Ramblers suggest that the Order is not necessary but provide no further evidence as to how else the permission could be implemented.
16. If the footpath is not stopped up then the planning permission cannot be implemented as the route would then be within the new boundary fence and blocked by the gate and fence at either end. For that reason, I am satisfied that it is necessary to stop up the footpath to enable the development.

Whether the development is substantially complete

17. At the time of my site visit there was no indication of any works in association with the planning permission. I am satisfied that the development is not substantially complete.

The effect of the Order on those whose rights would be extinguished by it

Persons whose properties adjoin, or are near, the existing public right of way

18. The occupants of 101a Moss Lane object to the Order. There is a pedestrian gate giving access to and from the garden of this property onto Denesway. The gate is situated to the north of point A and I agree with the OMA that accessibility to this gate is not affected by the Order.
19. On the balance of probabilities, it must be accepted that the unrecorded public right on foot affected by the Order continues over Denesway to join the public highway at the junction with Moss Lane and Cecil Avenue. As a result, 101a Moss Lane retains all public access as previously.
20. As noted there is no recorded legal right over the alternative route linking Denesway and FP26. Although the applicant has clearly left the used route outside the area affected by the planning permission, it is without legal protection at this time. As such I give less weight to the value of this route than I might otherwise. On the other hand the reliance of the OMA on this route as an alternative suggests an acceptance of public rights, which would be hard to ignore in the future. The legally recorded route along Cecil Avenue and FP26 to reach point B is not such a great distance that it could not also be viewed as a reasonable alternative.
21. Taking account of all these matters I consider that the additional distances in using the remaining unrecorded route south of Denesway or the alternative over FP26 are minimal. I am satisfied that the Order will not have a

² Land Registry official copy of title plan issued 5 June 2013, Title Number GM126574.

detrimental effect upon those whose properties are near to the existing public right of way. This includes the properties to the south of the Order route.

The general public

22. In relation to the general public the considerations set out above in relation to the available alternative also apply. I am satisfied that the disadvantage or loss to the general public as a result of the closure of the footpath would be minimal.

Other matters

23. A number of concerns have been raised, including a desire to see the Order route reinstated; disagreement as to the length of time that the Order route had not been available for public use and the circumstances of this; reference to an earlier proposed Order, dating from 1987; claimed prescriptive rights; health and safety; removal of signage; crime; cutting down of trees; the amenity value, or otherwise, of the proposal; previous planning permissions or applications; and inappropriate or illegal parking on Denesway and/or the adjacent land.
24. I have not been given any consideration to these matters, as they are not issues that are relevant to my decision on this Order.

Conclusion

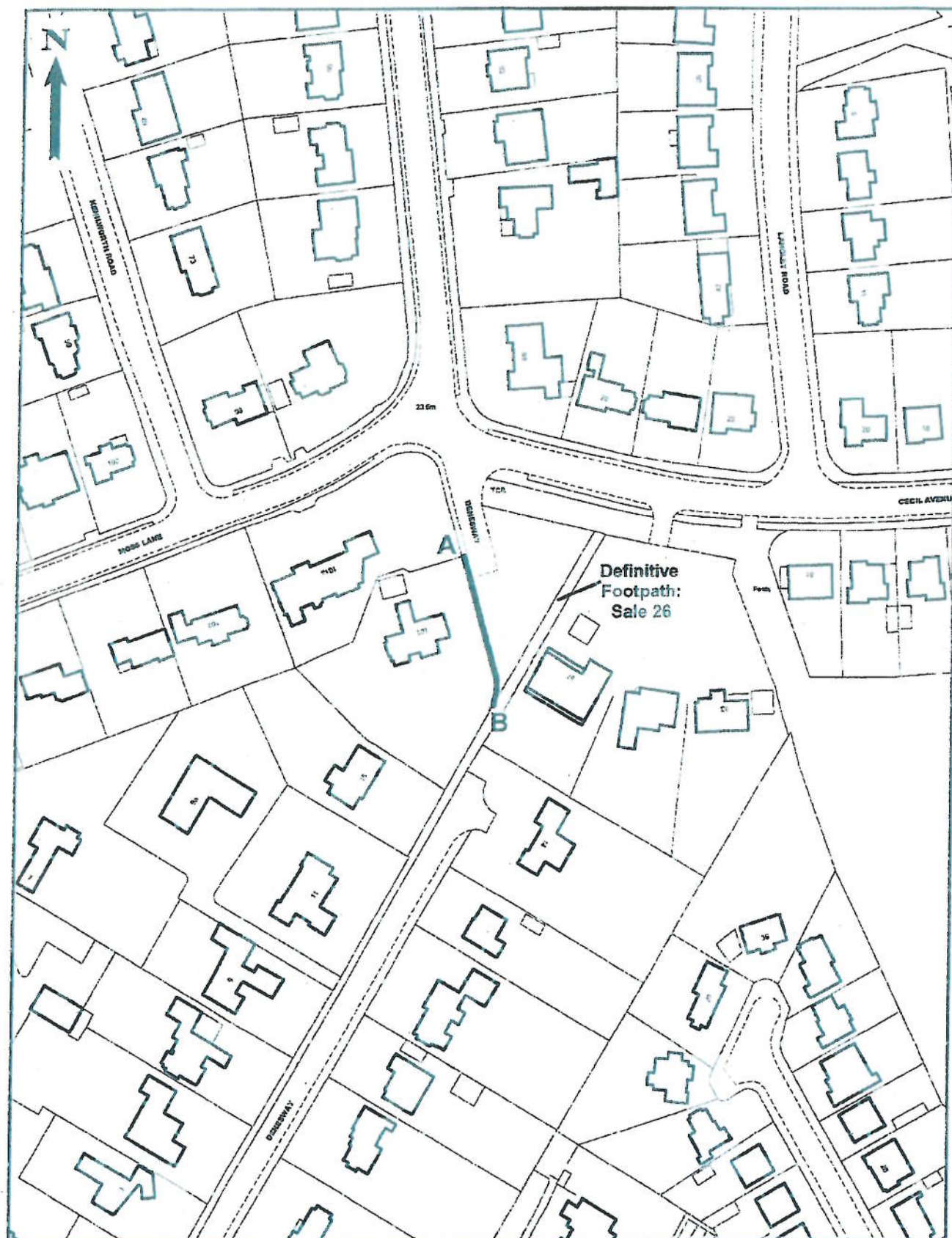
25. Having regard to these and all other matters raised in the written representations, I conclude that it is expedient that the Order should be confirmed.

Formal Decision

26. The Order is confirmed.

Heidi Cruickshank

Inspector



**TRAFFORD
COUNCIL**

**PUBLIC PATH STOPPING UP ORDER TOWN AND
COUNTRY PLANNING ACT 1990, SECTION 257**

**THE BOROUGH OF TRAFFORD (FOOTPATH
AT DEANSWAY AND MOSS LANE SALE)
PUBLIC PATH STOPPING UP ORDER 2015**

Order Map 1

4 February 2015 David Harrison

Scale: 1 to 1,250 @ A4

**© Crown Copyright and database right 2014.
Ordnance Survey 100023172**