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## Order Decision

Site visit made on 18 September 2017

**by Rory Cridland LLB (Hons), Solicitor**

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

**Decision date: 17 October 2017**

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### Order Ref: ROW/3168622

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Cornwall Council (Footpath No 15, Sennen (Part)) Public Path Diversion Order 2013.
- The Order is dated 16 July 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Cornwall Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

1. I undertook a site visit on 18 September 2017 accompanied by the landowner, a representative of the Council, Mr & Mrs Dale, and a representative of the West Cornwall Footpath Preservation Society. Together we walked the majority of Footpath 15 from its junction with the A30 to Point A on the Order Plan. In addition, we also walked the approximate line of the diverted route, although between points G and A the actual line walked was a few metres to south of the line depicted on the Order Plan. Nevertheless, I was able to gain a good understanding of the effect that the proposed diversion would have on both public convenience and enjoyment.
2. The Order, as made, depicts the existing route of footpath 15 as passing slightly to the north of the access track to the property known as No Place. However, following objections from the Parish Council, the Council has requested that the Order is modified to a line along the access track itself. This modified line more closely aligns with the one contained with the Definitive Map. Should the Order be confirmed, I am satisfied that it would be necessary to modify the Order to more accurately depict the line of the existing Footpath. As this would affect land not affected by the Order, these changes will require advertising in accordance with the requirements of Paragraph 2(3) of Schedule 6 to the 1980 Act.
3. Two objections were made to this Order within the Statutory Period. Further representations were made following the submission of the Order to the Secretary of State. I have had regard to all representations made in my consideration of this matter.
4. A number of concerns have been raised regarding previous and current obstructions of the existing footpath. However, my consideration of the Order is made on the basis that the existing route is open and in a fully usable condition.

## **The Main Issues**

5. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the landowner that the footpath in question should be diverted. The other tests for confirmation set out in s119 which are relevant to this Order are, firstly, whether the diverted footpath would be substantially less convenient to the public than the present one, and secondly, what effect the proposed diversion would have on public enjoyment of the path as a whole.
6. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council as well as having regard to the purpose of conserving and enhancing the natural beauty of the area, which is part of the West Penwith Area of Outstanding Natural Beauty ('AONB')<sup>1</sup>.

## **Reasons**

### ***Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted.***

7. The section of footpath to be diverted commences at Point A and proceeds along a vehicular access track towards the property known as No Place. Upon entering the curtilage, it proceeds through the gardens and in very close proximity to the property itself. In doing so it passes a number of windows which the appellant has indicated are used as bedrooms. On leaving the curtilage at point C, it continues in a generally east south easterly direction through an agricultural field for around 124 metres to a metal gate at the field boundary.
8. The Order is made to address security concerns arising from the proximity of the existing footpath to the property. There is nothing in the written evidence to suggest that the diversion would not be in the interests of the landowner. The Order would divert the footpath away from the property and it is clear that this would improve security. As such, I consider it would be expedient in the interest of the landowner that the footpath be diverted.

### ***Whether the diverted path would be substantially less convenient to the public***

9. The present length of footpath 15 is approximately 691 metres. The proposed diversion would add a further 68 metres to its overall length which represents an increase of around 9.8%, which, while longer would not be substantially so.
10. Ground conditions for most of the route would be comparable to the existing footpath crossing through mostly agricultural fields and with no significant differences in gradient. However, the proposed new route would be less direct than the present one and would introduce a further two limitations at points G and A in the form of kissing gates. Nevertheless, walkers are already required to pass through a gate at point A and navigate a difficult stile crossing at point C. In contrast, the kissing gate proposed at point G would result in only a minor inconvenience.

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<sup>1</sup> Section 85 of the Countryside and Rights of Way Act 2000 ('CROW Act')

11. Taking into account the small increase in length, the limited number of limitations and the comparable surfaces, I am satisfied that the proposed diversion would, due to its increased length and alternative alignment, be slightly less convenient than the current path but would not be substantially so.

***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.***

12. Between points D & H, the proposed route proceeds through the same field as the existing route (points D-C). Ground conditions are similar as are views towards the cliffs. At point H, it passes through an existing gap in the field boundary at which point it turns west and proceeds through a second field to Point G where it would exit the field boundary via a kissing gate before continuing on to point F. Throughout these sections there are clear views of the cliffs and I found that it provides a similar walking experience. I am therefore satisfied that there would be no loss of enjoyment to users when walking along this part of the proposed route.
13. However, the same cannot be said of the proposed new route between points F and A. Here the route would pass along the rear gardens of residential properties, blocking out views of the cliffs and detracting from the rural countryside setting. While I accept that the current alignment of footpath 15 through the gardens of No Place is not ideal, the extent of its impact on the walking experience is limited. The majority of the route provides extensive views out towards the cliffs with only a small break as it passes through the gardens of No Place. In contrast, the proposed new route would materially alter the end of footpath 15, resulting in a greater loss of views and introducing an urban setting far sooner than is the case with the existing route. This would detract from the overall walking experience and materially impact on the public enjoyment of the path as a whole.
14. Furthermore, I note that Part 3 of the Schedule includes two limitations in the form of wooden kissing gates at points G and A. Action AA2 of the ROWIP requires the Council to apply the least restrictive option where it is reasonable and appropriate to do so, whilst considering the needs to retain the historic fabric of the landscape and ensuring that appropriate land management can take place.
15. Access to the footpath is currently gained via a large wooden gate which also provides vehicular access to No Place. The Order makes provision for a new gate at point A which would be located alongside this existing structure. Concerns have been raised that a wooden gate in this location would not be in keeping with the AONB. I do not agree. The proposed structure would appear as a natural extension to the existing gate and would not materially alter the sensitive surroundings.
16. Nevertheless, the proposed structure at Point G would be located within the existing Cornish hedge, the loss of which would negatively impact on a key feature of the AONB. While I note that the Council has invited me to amend Part 3 of the Schedule to provide for a 'penwith' style gate as opposed to the wooden one specified, with only limited information as to the design of this structure, I cannot be certain that even with such a modification, the character of this part of the AONB would be preserved.

17. Accordingly, for the reasons set out above, I do not consider it would be expedient to confirm the Order due to the effect it would have on both public enjoyment of the route as a whole as well as the impact it would have on the surrounding sensitive landscape.

**Conclusion**

18. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

**Formal Decision**

19. The Order is not confirmed.

*Rory Cridland*

INSPECTOR



Highways Act 1980 Section 119 Order Plan: Re File HAD 145

Parish: SENNEN CIVIL PARISH Path Number: FP/118/15

Produced by Countryside Access Team: 27 June 2013

