



Order Decision

Site visit on 18 October 2017

by Sue Arnott FIPROW

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

Decision date: 02 November 2017

Order Ref: ROW/3170996

- This Order is made under Section 119 of the Highways Act 1980. It is known as the Essex County Council Footpath 16 Great and Little Leighs in the City of Chelmsford Public Path Diversion Order 2016 and is dated 7 October 2016.
- The Order proposes to divert part of public footpath 39 to the north east of the village of Great Leighs, off BanTERS Lane, as detailed in the Order map and schedule.
- There were twenty objections and three representations 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.

Procedural Matters

1. I visited the site on Wednesday 18 October 2017 accompanied by Mr R Lee (on behalf of Essex County Council (ECC)), Mr M Stevens (the applicant), Mrs K Stevens, Mr J Thurlow (Footpath Representative for Great and Little Leighs Parish Council) and Mr M Lees (the local correspondent for the Open Spaces Society – Chelmsford District).

The Main Issues

2. 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 Footpath 16 that the public right of way in question should be diverted;
 - (b) the new termination points of Footpath 16 (being on the same highways) will be substantially as convenient to the public;
 - (c) the new route 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 diversion on public enjoyment of the 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 path and the land over which the new path would be created together with any land held with it, having had regard to the provision for compensation.
 3. 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.
-

Reasons

The interests of the owner of the land

4. The applicant owns and farms the land over which the majority of the present route of Footpath 16 passes. Specifically, this includes the sections shown on the Order map as A-B and C-D. The definitive line between points B and C passes through the extended garden of 'The Lilacs' in Banters Lane which is in separate ownership although this section is no longer walked by the public.
5. The precise line of the public right of way is quite difficult to identify on the ground since it takes an indirect route across a large open field in order to connect with Footpath 17 which leads to Mill Lane. People using Footpath 16 take a direct line from a point north east of point B across to point D on Footpath 17, not the legally defined line which is most probably based on a much earlier field system with boundaries which have since been removed.
6. This clearly presents a difficulty for the applicant. Following ploughing, he is required to reinstate the surface of the public right of way, yet this is not the route walked by the public. Whichever route is restored, the process involves a significant time commitment and a substantial loss of cultivation area, given the cross-field section of Footpath 16 extends to some 451 metres.
7. The applicant has proposed to substitute a new route, broadly parallel to the existing footpath, instead following the line E-F-G, where the length between point E (on Banters Lane) and point F runs alongside a field boundary. As a consequence the surface would remain undisturbed and the section subject to ploughing would be limited to 96 metres (F-G).
8. There is little doubt that this would be advantageous in agricultural terms to the applicant as owner and occupier of the farm land affected. The owner of the land affected by section B-C has offered no objection to the proposal and will quite clearly derive a benefit from having the public right of way removed from his garden.
9. Some of the objectors challenge the long-term intentions of the applicant, suggesting that the field in which Footpath 16 is located has been put forward for consideration for housing development through the Strategic Land Assessment Site Submissions process. No evidence has been submitted to support this assertion and I am otherwise informed that this land¹ is not included in the Draft Local Plan as a site for housing. The applicant has responded by pointing to his intended investment in his farm in Banters Lane and commitment to farming in the area for the foreseeable future. Without further reason to substantiate the submission that the grounds for seeking this diversion are surreptitiously disguising some ulterior motive, I am fully satisfied that the proposal to re-align Footpath 16 would be expedient in the interests of the owner of the land.

Convenience to the public

10. In assessing the relative convenience of the present and proposed routes I have considered various factors including length, width, gradient, surface and limitations.

¹ I am told that an adjacent field has been included.

11. It is quite apparent from the Order map that at 526 metres the existing definitive route is considerably longer than the proposed path at 375m. However the starting points on Banters Lane are 191m apart and the new connection point on Footpath 17 (point G) is 95m from point D on the existing path. Therefore assessing the relative convenience of the new route depends where the walker is coming from and going to. By my calculation it is only those people choosing to approach from the north-west along Banters Lane with the intention of walking north eastwards along Footpath 17 who would be disadvantaged, having to walk 135m further than via the present definitive line. In my view that would be less convenient but not substantially so in this context.
12. None of the objections challenge the relative convenience of point G on Footpath 17 as compared with the existing point D. Again, the answer depends on where the user is walking from and to, but on balance I see no reason to conclude that the new connection would be other than substantially as convenient.
13. The re-location of the connection with Banters Lane from point A to E needs greater consideration. ECC submits that the new route would be 187m closer to the start of Footpath 14 which lies further to the south and for those people following a route linking both these paths there would be less road walking necessary. Clearly that offers a more convenient connection for some, whilst those approaching from the north-west would be inconvenienced by the need to walk 187m further along the same lane.
14. Some of the objections refer to heavy lorries using this road and, being a single-carriageway, that presents potential dangers for walkers. However, despite a gradual curve in the road at this point, there is reasonable forward visibility and a grassy verge for most of the distance between the two points. On balance I consider this to be a case of swings and roundabouts: some would find the proposed route offers a better connection whereas some will find it less convenient. Overall, I conclude the new point of termination on Banters Lane (E) would be substantially as convenient as the existing point A.
15. As regards width, it is proposed to record the new footpath as 2 metres wide whereas the definitive statement does not include a width for the present Footpath 16. After ploughing, reinstatement is therefore only required to a standard width of 1 metre so there would be a theoretical benefit to the public in this respect. Further, the greater proportion of the new path would not be subject to regular ploughing, offering a distinct advantage over the present route.
16. There is no difference in terms of gradient since both routes are virtually flat. No additional limitations are proposed on the new route.
17. As regards the nature of the surface, one of the objectors expresses concern over whether, if the Order is confirmed, the new route would be in a condition suitable for public use before the existing route is closed. In fact the Order provides for the present definitive route to continue in existence for 35 days after confirmation during which time any necessary works to improve the surface of the new route would be carried out. ECC has given an undertaking that this requirement would be complied with. Further, the Order provides for any expenses incurred in the making of the Order and bringing the new site of the path into a fit condition to be defrayed by the applicant.

18. Overall, I agree that the new route proposed (E-F-G) would not be substantially less convenient to the public than the present Footpath 16 (A-B-C-D).

Other considerations

19. As regards the effects on the public's enjoyment of Footpath 16, very few of the objections express a view on this. During my site inspection I walked both the present and proposed routes at a time of year when the field was ploughed but with no crop growing. Comparing the two routes, unsurprisingly I found the present route more open but more difficult to follow the definitive line of the public right of way; on the other hand, the proposed route had views westwards limited by vegetation alongside the two ponds and watercourse bounding the field but much easier to locate on the ground.
20. However, I understand that the main crop in recent years has been maize. Consequently the public path gradually becomes a corridor through the growing crop with no outward views once the plants grow beyond eye-level. During this period the proposed route would offer an advantage in so far as the tall crop would lie on one side only with a more open aspect and less restricted views over the watercourse.
21. Both have advantages at different times of year but I do not consider the public's enjoyment of the path would be significantly reduced as a result of the diversion proposed.
22. Compensation issues have not been raised here. No adverse effects on the land arising from the diversion have been drawn to my attention and no issues related to the relevant rights of way improvement plan have been highlighted beyond the general desire to improve network connectivity.

Whether it is expedient to confirm the Order

23. 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.
24. One of the objectors comments that "*Allowing footpaths to be removed without extenuating circumstances sets a precedent for similar action to be approved easily in future and will be the death of small villages.*" Whilst I understand that perspective, in this case I consider the landowner to have a justifiable reason for diverting this public right of way and have concluded that the public would not be inconvenienced to any significant extent by the diversion or would find their enjoyment of the path essentially spoiled.
25. Some objections refer to Footpath 16 being well-established² and part of the history of the village. Whilst that may well be true, the provisions of Section 119 of the Highways Act 1980 allow for lawful alteration of the highway network within set parameters in response to present day circumstances. Whilst in some respects the present definitive route offers advantages over the proposed route and vice versa, overall I am satisfied that the statutory tests have been met in relation to the proposed diversion of Footpath 16. I therefore conclude it would be expedient to confirm the Order.

² I note again that it appears the public have not been walking the recorded line of the public right of way.

Other matters

26. Although many letters of objection were submitted within the relevant period generally opposing changes to public rights of way within the Parish, several appear to be based on a misunderstanding of the proposal(s)³, many believing this (and others) to be proposed for closure. Few identify specific concerns about this particular path diversion but I have considered all the objections and representations where relevant.

Conclusion

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

Formal Decision

28. I confirm the Order.

Sue Arnott

Inspector

³ This Order is being determined alongside three others which propose changes to Footpaths 14, 15 and 39 within Great and Little Leighs Parish.

MAP NOT TO
ORIGINAL SCALE

Attesting Officer

Essex County Council

© Crown copyright and database rights
Ordnance Survey Licence No. 100019602

**DIVISION OF FOOTPATH 16 GREAT LEIGHS
CITY OF CHELMSFORD
SECTION 119 HIGHWAYS ACT 1980**

Plan No. PROW-16-06 rev 06.09.16

Route to Close A-B-C-D

New Route E-F-G

Unaffected Route

Definitive Map Sheet TL71NW Scale 1:2500 (A4 paper)

Grid Ref at A 57358,21815

Post code at The Lilacs CM3 1NT

