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## Order Decision

Site visit made on 23 October 2017

**by D. M. Young BSc (Hons) MA MRTPI MIHE**

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

**Decision date: 08 JANUARY 2018**

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### Order Ref: ROW/3172046

- This Order is made under Section 119 of the Highways Act 1980 (the Act) and is known as the Wokingham Borough Council, Parish of Earley Footpath Earley 15 (part) Public Path Diversion Order 2014.
- The Order is dated 27 May 2014 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Wokingham Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed with a modification as set out in the Formal Decision below.**

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### Procedural Matters

1. This case concerns the proposed diversion of that part of Public Footpath Earley 15 (the Footpath) which traverses 660 Wokingham Road, a Harley Davidson showroom and garage. The legal line of the Footpath is and has been unavailable for many years. Nonetheless, the Order seeks to regularise the situation by legally diverting the Footpath along the eastern boundary of No 660 adjacent to the River Loddon.

### The Main Issues

2. The Order is made in the interests of the owner of the land crossed by the Footpath. Section 119 of the Act requires that, before confirming the Order, I should be satisfied that:
  - (a) it is expedient, in the interests of the owner, 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 the 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.
3. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of any 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.

## **Reasons**

### ***Background***

4. In 2014 planning permission was granted<sup>1</sup> for the erection of a vehicle showroom and repair centre. That permission has been implemented. Attached to the planning permission was a Section 106 agreement which along with the approved layout plan provided for the diversion and widening of the new footpath to 2.5m opening out to 5.5m at its termination point on Wokingham Road. These requirements reflect the situation on the ground I observed when I carried out my site inspection.

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

5. As the legal line of the Footpath runs across a busy commercial garage, there is a clear advantage to the landowner in diverting it from both a safety and security perspective.
6. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowner that the Footpath should be diverted.

### ***Whether the new route will be substantially less convenient to the public***

7. At present the walked route deviates from the legal alignment shown on the Order plan. However, my determination must be made as if the legal line were currently available since it is established practice in these matters to disregard temporary circumstances.
8. The diversion of the Footpath would be fairly modest in its extent and its siting along the eastern boundary of the garage would be more convenient than the legal alignment. The difference in distance between points A-D as a result of the diversion would be negligible. Termination point A would not change and the change from A-D as opposed to A-B-C-D would be negligible. The proposed route would be wider<sup>2</sup> and according to the OMA it has an improved surface. Finally, no gates or stiles would be erected.
9. Accordingly, there would not be any significant disadvantage or loss to the general public as a result of the diversion. I therefore conclude that the new route would not be substantially less convenient to the public.

### ***The effect of the diversion on public enjoyment of the route as a whole***

10. The definitive line of the Footpath runs in an arc across No 660. I can imagine that users would experience a certain sense of trepidation and uneasiness about walking through a busy and at times, noisy motorcycle garage, regardless of their legal rights.
11. The proposed route is segregated from the garage and is adjacent to the River Loddon and therefore offers enhanced views of the river and surrounding environment. There can be little doubt that this offers a more pleasant walking experience. To that end, I am satisfied that the diversion would not diminish the public's enjoyment of the route as a whole.

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<sup>1</sup> LPA Ref: F/2013/1736

<sup>2</sup> The current width of the Footpath is unrecorded

***The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation***

12. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Although compensation issues have not been raised, the landowner has agreed to defray any compensation which becomes payable in consequence of the Order being confirmed.

***ROWIP***

13. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

***Other Matters***

14. Although the Order is made in the interests of the land owner (Mr G Dacre), the only objection to the Order is from the same. This is because the stated width of 3.5m in Part 2 of the Order Schedule is inconsistent with the earlier s106 agreement and what has been physically provided. The Order Making Authority (OMA) accepts that the reference to 3.5m in the Order is erroneous and the Schedule should be modified accordingly should I be minded to confirm the Order.

***Whether it is expedient to confirm the order***

15. There is nothing in the submissions or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order. I therefore conclude that with a modification it is expedient in the interests of the landowner to confirm the Order.

***Conclusions***

16. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification described at paragraph 14 above.

***Formal Decision***

17. The Order is confirmed subject to the following modification:

- Under 'Width' in Part 2 of the Schedule to the Order, delete both occurrences of '3.5m' and replace with '2.5m'.

*D. M. Young*

**Inspector**

