

Penderfyniad ar yr Gorchymyn

Ymweliad â safle a wnaed ar 11/04/17

gan Joanne Burston BSc MA MRTPI
Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 19/07/2017

Order Decision

Site visit made on 11/04/17

by Joanne Burston BSc MA MRTPI
an Inspector appointed by the Welsh Ministers
Date: 19/07/2017

Order Ref: ROW/3165372

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 119 of the Highways Act 1980 and is known as Powys County Council (Diversion of part of Public Footpath L15 and L17 in the Community of Welshpool) Public Path Diversion Order 2013.
- The Order is dated 11 November 2013 and there was one objection outstanding when Powys County Council submitted the Order for confirmation to the Welsh Ministers.
- The Order proposed to divert the alignment of the Public Footpaths in the vicinity of The Dingle Nurseries and Frochas Hill Kennels, Welshpool as shown in the Order map and described in the Order Schedules.

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

Procedural Matters

1. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is consistent with the sustainable development principle as required by section 8 of the WBFG Act.
2. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. I made an unaccompanied site visit to the area. I was unable to walk the whole of paths L15 and L17 but was able to view the land over which the current paths and proposed diversions pass. I am nevertheless satisfied that I am able to reach a decision on this Order.
3. In accordance with the appropriate Regulations for the drafting of Orders, the wording concerning the consent of the consulted local authority to the making of the Order has been omitted. Therefore the Council has requested that the Order be amended to include the wording "and have consented to the making of the Order as required by section 120(2) of the 1980 Act".
4. As the physical works to the paths will be carried out by the applicant, the Council has requested that the following words should be added to the Order "and/or when the

authority certifies that work required to bring the footpath described in Part 2 of the Schedule into a fit condition for use by the public has been carried out”.

5. In Part 1 of the Order (Sections of highway as indicated on the Order Plan Footpath L15 A-B-C) the 11th line of the description indicates that the direction given between points B-C is west-southeasterly. However it appears from the map that the direction is east-southeasterly. The Council has stated that this was a typographical error and the Order should be modified to read “east-southeasterly”.
6. The last sentence of Part 2 of the Order (Footpath L17 I-J-K-L) has been manually changed / overwritten with L. As only an Inspector has the authority to modify a sealed Order the Council has requested that this be added to the formal modifications.
7. The Council state that, late in the day, it was identified that a pedestrian gate would need to be added (Point K on the Order map). Whilst the Order map and Schedule 3 of the Order are correct, there are typographical errors in Schedule Part 2 of the Order. Accordingly, Part 2 of the Order Schedule would need to be amended if the Order were to be confirmed.
8. I am content that the proposed modifications are necessary, by adding clarification of the diverted path and also to correct minor drafting anomalies contained within the Order. On this basis if I decide to confirm the Order I will do so with appropriate modifications. Due to the nature of these modifications I do not believe any persons would be prejudiced by them. Furthermore, such modifications would not require re-advertising.

Main Issues

9. The Order has been made in the interests of one of the landowners. Section 119 of the Highways Act 1980 ('the 1980 Act') requires that before confirming the Order, I must first be satisfied it is expedient in the interests of the landowner that the footpath in question should be diverted, and that the new footpath will not be substantially less convenient to the public. I must also consider whether the proposed diversion satisfies the test set out in Section 119(2) which states that a proposed diversion order must not alter the point of termination of the path otherwise than to another point on the same highway, or highway connected to it, and which is substantially as convenient to the public.
10. I shall then consider whether it is expedient to confirm the Order firstly having regard to the effect which the diversion would have on public enjoyment of the path as a whole, and then its effect on the land affected by the Order routes. I must also have regard to the provisions for compensation.
11. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpaths in question should be diverted

12. The current route of path L15 commences from the County Road U2430 and continues in a south easterly direction through the grounds of Brookside Cottage and on through the lake, plant storage areas and formal landscaped garden (The Dingle Garden) of the Dingle Nurseries, where it then meets with path L17. From this point path L15 continues south easterly through the Nursery's plant growing and storage area. The

total distance from point A to point C is approximately 274m (see copy of the Order map appended below).

13. From the point paths L15 and L17 meet, L17 heads in a north westerly direction through the Dingle Garden and Garden Centre (the total distance from point B to point D is approximately 168m) crossing the U2430 highway and continuing northwest through the Nursery's customer parking area and a grassed Paddock. From here it travels northeast through the garden of 'Fron Haul' where it terminates at the C2045 county road. The total distance from point D to point E is approximately 100m.
14. The Order was made following an application by one of the landowners at Dingle Nurseries, Mr Hamer. Other landowners effected by the Order include Mr and Mrs Joseph (Dingle Nurseries) and Mr and Mrs Batoctoy (Fron Haul), these landowners have been consulted and have provided their consent to the proposed diversion.
15. The Order is made to address security and health and safety issues arising primarily from the paths' route through the Dingle Garden and Garden Centre. As I saw on my site visit the northern section of path L17, at point D has been altered by the formation of a cutting. This area is used for car parking and storage and has been excavated into the slope. Secondly a lake has been created over the northern end of path L15. These factors result in the paths not being fully available for use along their definitive lines.
16. The landowner has also raised concerns that the route currently runs through the Garden Centre retail area which results in security issues, particularly when the Centre is not staffed. Furthermore, the Dingle Garden is an RHS garden and operated as an attraction for which there is an entrance fee. The garden is explored along meandering paths through attractive plants, sculptures and water features. It would no doubt be easy to get distracted and wander from the definitive path. Whilst the landowner notes the legal right for the public to use the Right of Way, walkers often stray from path L17 which he states is unfair on those visitors who have paid to walk around the garden. Whilst I note the landowner's concerns regarding the admission charge, this footpath was established prior to the Dingle Garden becoming a visitor attraction which tempers any weight that can be attached to it.
17. Finally, Path L17 passes close to the dwelling 'Fron Haul', owned by Mr and Mrs Batoctoy. The proposed diversion would move the path further away from the dwelling thereby increasing their privacy.
18. Having regard to the above, I am satisfied for the reasons given that it is expedient in the interests of the landowner(s) that the footpaths should be diverted.

Whether the new footpath will be substantially less convenient to the public

19. Paths L15 and L17 form part of a wider network of Rights of Way in the area, linking rural roads to Y Frochas and the wider undulating countryside. The proposed new route of path L15 would commence from the U2430 where there is an existing access. A new pedestrian gate would be installed at this point¹. The path would follow the existing hard surfaced Nursery access road to meet the diverted path L17. It then continues in an easterly direction, with the diversion ending on the access track within

¹ All proposed gates on Footpaths L15 and L17 would meet current British Standard BS5709:2006 as set out in Part 3 (Conditions and Limitations) of the Order.

the Nursery storage and growing area. The total distance from point F to point C is approximately 447m.

20. The proposed new southern section of path L17 would commence from the point where the proposed diversion point of path L15 and L17 meet (Point I). It then continues in a north-westerly direction along a hard surfaced access track to point J, where it turns north-northwest between the boundary fence of the Dingle Garden and the lake. At point K a new pedestrian gate would be installed. Continuing along the access track the path meets the U2430, adjacent to the Nursery storage sheds. The total distance from point I to point L is approximately 194m.
21. The northern section of path L17 commences on the U2430 adjacent to the boundary of Sunny View and the neighbouring paddock. A pedestrian gate would be installed at this point. The route then steps up steeply from the road and continues in a north-westerly direction across a grassed paddock where a gate would be required to gain access through a fenced boundary. The proposed path continues in the same direction until it meets the C2045, where it terminates. A gate would also be required at this point. The total distance from point M to point O is approximately 133m
22. In terms of length, the proposed routes will be longer. However, I do not consider this is significant in terms of what is likely to be a much longer recreational walk using this and other paths in the area. Moreover, the northern end of diverted path L17 would also be closer to the ends of paths L48, L33 and L32, which would reduce the walking distance along the metalled road.
23. As regards ease of use, the proposed route will be on broadly level ground between points F and C, compared to the existing route. As I saw on my site visit between points A and J the ground is steeply sloping and muddy during inclement weather. The proposed diversion would provide a more convenient walking experience for some who are less mobile. The diverted sections of path through points L and I would also avoid the series of steps within the Dingle Gardens and the gradients are similar to the existing route.
24. The northern section of existing path L17 is currently on land which rises in a northerly direction and steps up from the highway across a grassed paddock. Walkers are faced with a steep climb up the valley side. I was not able to accurately survey the gradient of the proposed path, but it would appear to be greater than the existing path and requires significant effort to climb and corresponding care in the reverse direction. Whilst I did not observe the soft ground described by the objector, I understand that some ground improvements have been recently made.
25. I accept that the access point from the road into the paddock will need profiling and appropriate resurfacing, which could lead to surface maintenance costs in the long term, however this would minimise or avoid the use of steps. In this respect I note the objector's concerns regarding maintenance costs. However, I see no reason why the maintenance and repair of the path would be unduly onerous for the Council. In any case, the Council would be responsible for the maintenance of either the existing or proposed route.
26. The objector contends that as the proposed route would utilise the Nursery's access roads the safety of users would be compromised. However, the access roads are lightly trafficked, of suitable width and with low vehicle speeds. Moreover, visibility for users of the new route is good in all directions.

27. The question I must address is whether or not these disadvantages would render the proposed path substantially less convenient than the existing route. I consider that those people who are able to use the current route will be likely to be able to negotiate the proposed route. Furthermore, I have no evidence that the route is currently in use by significant numbers of walkers who have either sight or mobility problems. I therefore conclude that the path, through points M-N-O, will be unlikely to be less convenient as a consequence of the diversion or will discourage potential users. Having given careful consideration to the issues raised, on balance, I conclude that the new footpaths will not be substantially less convenient to the public.

Whether the new path(s) termination points (being on the same highway) are substantially as convenient to the public

28. The proposed termination point at the northern end of path L17 would be a short distance to the west of the existing termination point on the C2045. At its southern end path L17 would terminate where it meets path L15 a short distance to the west of the existing termination point.
29. The proposed termination point at the northern end of path L15 would be a distance of approximately 255 metres to the west of the existing termination point on the U2430. However, the diversion would facilitate a more extensive off road route.
30. Accordingly, the Order satisfies the test that the termination points would be on the same highways as the existing footpath and that the routes would remain substantially as convenient to the public.

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

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

31. From my site visit I consider that both routes offer a different aspect of the countryside, each as valuable in its own right as the other by affording extensive views of the surrounding countryside. The objector suggests that the views from the diverted path L17 would be significantly less attractive than those from the existing path which runs through the Dingle Garden.
32. I accept the loss of the intimate views of the Garden may reduce the enjoyment of some walkers. However, this is subjective and there will always be people who enjoy looking at the Garden at close quarters and those who feel uneasy about passing close to and through the gardens, which are a private visitor attraction. Overall, I consider the proposed route provides views as good as those enjoyed from the existing path, and at some points more panoramic, such that public enjoyment of this aspect is maintained or enhanced.
33. I consider that the issues are finely balanced and do not significantly affect the enjoyment of the route as a whole. Accordingly, I find that there is no significant detrimental impact on amenity or enjoyment that would lead me to conclude the Order is not expedient in this regard.

(b) the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the right is so created and any land held with it, having regard to the provisions for compensation

34. The proposed paths will cross land in a different ownership. However, the proposed diversion is supported by the owners of the land crossed by both the existing and the

proposed routes. No adverse effects on the land served by the existing path or the land over which any new right of way would be created have been identified.

Rights of way Improvement Plan ('ROWIP')

35. The only extracts of the relevant ROWIP with which I have been provided are those relating to considering the needs of disabled people. Although I have found that I do not consider that the proposed route provides any particular benefit for disabled walkers, I have no evidence that it is in conflict with material provisions of the ROWIP.

Whether it is expedient to confirm the Order

36. It is necessary to balance all elements of Section 119 of the 1980 Act to reach a conclusion.

37. I have concluded that it is expedient in the interests of the landowner that the path be diverted, and that although there will be some disadvantages to the public as a result they do not amount to being classed as substantial. I have further concluded that any detrimental effect on the enjoyment of the route as a whole is off-set to some degree by the different qualities experienced on the diverted route. I would not go so far as to say that the diverted route is superior in any way to the existing route, but only to say that the minor disadvantages to the public do not outweigh the advantages to the landowner. It follows that it is expedient to confirm the Order.

Conclusions

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

Formal Decision

39. The Order is confirmed subject to the following modifications:

- At the end of paragraph (3) of the Order, the following words shall be added "and/or when the authority certifies that work required to bring the footpath described in Part 2 of the Schedule into a fit condition for use by the public has been carried out and have consented to the making of the Order as required by section 120(2) of the 1980 Act".
- In Part 1 of the Schedule to the Order, in line 11, change "west-southeasterly" to "east-southeasterly".
- In Part 2 of the Schedule to the Order, the last sentence of Footpath L17: I-J-K-L change "(point K)" to "(point L)".
- In Part 2 of the Schedule to the Order change the title of "Section L-M-N" to "Section M-N-O" and change, in line 4 of this section "(point L)" to "(point M)", in line 10 of this section "(point M)" to "(Point N)", in line 16 of this section "(point N)" to "(point O)", and line 17 of this section from "I-J-K-L-M-N" to "I-J-K-L-M-N-O".

Joanne Burston

INSPECTOR

Order Map

