



Order Decision

Site visit made on 17 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

Order Ref: ROW/3173335

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ("the 1990 Act") and is known as the Cornwall Council (Footpath No.1, Carlyon (Part) and an Unrecorded Public Footpath) (Overflow Car Park at Beach Road, Carlyon Bay) Stopping Up and Diversion Order 2015.
- The Order is dated 5 October 2015 and proposes to divert part of Footpath no 1, Carlyon and stop up an unrecorded footpath as shown on the Order Plan and described in the Order Schedule.
- There was 1 objection 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 Confirmed subject to modifications.

Procedural Matters

1. One objection was made to the Order within the statutory period. A further three objections were received following the submission of the Order for confirmation to the Secretary of State. I have had regard to all comments received as part of my determination.

The Main Issues

2. The Order was made because it appeared to the Council that it was necessary to divert part of footpath No.1, Carlyon ("the Footpath") and to stop up an unrecorded footpath (the "Unrecorded Route") at the car park at Beach Road, Carlyon Bay in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
3. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert the Footpath and to stop up the Unrecorded Route in order to allow development to be carried out in accordance with planning permission already given but not substantially complete.
4. Even if I were to find it necessary to divert the Footpath and stop up the Unrecorded Route to allow implementation of the permission, my confirmation of the Order is discretionary. In exercising this discretion, I must consider the merits and any disadvantages of the proposals 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 affected by it.

Reasons

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

5. Planning permission reference PA 10/07544 dated 19 August 2011 was granted for a development comprising the resurfacing of the car park together with the demarcation of parking spaces, new cycle parking provision, associated landscaping, and a new surface water drainage system ("the Original Scheme"). Two further planning permissions were granted under references PA12/10196 and PA14/05234 for works similar to the Original Scheme but with some alterations including an increase in parking spaces. All of these permissions contain a requirement for works to commence before the expiration of three years from 19 Aug 2011. Although the developer and the Council have indicated that works commenced before this date, there is little robust evidence, either in the written submissions or on site, to demonstrate that this is the case. Accordingly, I cannot be certain that the above permissions are currently extant.
6. However, a further permission was granted on 8 January 2016¹ which is currently extant ("the Extant Permission"). I have seen copies of the relevant consent and the proposed car park layout. It is clear that the permission relates to the land crossed by the Footpath and the Unrecorded Route and its implementation would affect both.
7. In considering whether or not to confirm the Order, I must have regard to the circumstances which are present at the time of my determination. The fact remains that there is an extant planning permission in place which cannot be implemented unless the Footpath was diverted and the Unrecorded Route stopped up. I therefore find that it is necessary to divert the Footpath and to stop up the Unrecorded Route in order to enable development to be carried out in accordance with planning permission already granted.
8. The Order, as drafted, contains references in the preamble to the Original Scheme. The developer has requested that, should the Order be confirmed, it is modified to also include references to the Extant Permission. However, the form of Order required by Schedule 1 of the Town and Country Planning (Public Path Orders) Regulations 1993² does not require the planning permission to be specifically referred to and I see no reason not to simply modify the Order to remove the reference to the Original Scheme. While I am mindful of the impact that this might have on the public's ability to comment on the proposal, the Order is clear as to the effect it would have on the existing or proposed routes. No objections have been received on the basis that the routes are unaffected by the development and I do not consider such a modification would materially prejudice the interests of those who may wish to comment.

Whether the development is substantially complete

9. At the time of my site visit there was no indication of any significant works having been carried out in association with the planning permissions. The site

¹ Ref: PA15/10219

² SI 1993 No. 10

is open, the resurfacing has not been undertaken and there is no obvious demarcation of spaces. Likewise, there was little evidence of other substantial works having been carried out. Furthermore, both the Footpath and the Unrecorded Route are easily accessible and currently capable of use, albeit that they may, at times, become obstructed by parked vehicles.

10. Overall, I am satisfied that the development is not substantially complete.

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

11. The Footpath commences at point A (as shown on the Order Plan) and proceeds along a gravel based surface through the existing car park in a south westerly direction to point B. It is poorly defined on the ground and there are few indications which would alert either walkers or drivers to its presence. Similarly, the Unrecorded Route located to the east and which runs almost parallel to the Footpath, passes along a similar surface for most of its length and again is poorly defined. This route is unrecorded, of no particular merit and provides no greater convenience or enjoyment to the public than the Footpath. Its loss would have little impact on either the wider network or public enjoyment.
12. In contrast to the above routes, the new route to be created (E-D-B) is generally well-defined, clearly signposted and runs along the southern boundary of the car park. It is currently part of a permissive route which forms part of the South West Coast Path and is well signposted. Being directly opposite the junction of other connecting footpaths, it forms a clear and direct link with the wider public rights of way network.
13. The proposed diversion would move the footpath closer to the cliff. Concerns have been raised regarding the potential for this new route to be lost as a result of coastal erosion. Should such a loss occur, I acknowledge that the rights of the public would be lost and that no alternative route would automatically come into being. Nevertheless, in this case, the proposed route would still be located some distance inland³. While I accept that this part of the coastline is at risk of erosion and collapse, both the Council and the developer have submitted evidence which indicates that this particular part of the cliff would have only a low probability of stability failure in view of its low slope angle and the established vegetation. There is no robust evidence that would indicate that this evidence is materially flawed or that the associated risks could not be effectively managed. Likewise, in the unlikely event that the path was to be lost as a result of coastal erosion, there is nothing to indicate that appropriate steps would not be taken to ensure that an alternative route could not be established. Additionally, in terms of public safety, the risks posed would in many respects be no different to other cliff top paths and there is nothing to suggest that there is any heightened risk at this particular location.
14. Turning then to the concerns raised regarding drainage of the new route and the suitability of its surface, during my site visit, I observed that all walkers, without exception, were using the proposed new route⁴. There is little evidence that the existing permissive path regularly becomes waterlogged or impassable

³ Approximately 10 metres from the cliff edge at its closest point and around 40 metres at its widest.

⁴ which is currently used as a permissive path.

or walkers are discouraged from using it for these reasons. Furthermore, the Order requires a suitable surface to be installed along the new route before it takes effect. In addition, the Extant Permission requires a suitable scheme of surface water drainage to be approved prior to the commencement of development which would help ensure that there would be little additional surface water run-off. On balance, I am satisfied that any concerns regarding drainage of the route can be overcome prior to the diversion taking effect.

15. Accordingly, I am satisfied that, on the evidence before me, there would not be any material diminution of the rights of those affected by the Order.

Other Matters

16. The objectors have invited me to amend the Order to insert a provision requiring the landowner to enter into an agreement to replace the route in the event that it was lost to coastal erosion. However, such a modification would be neither appropriate nor enforceable. I am therefore unable to modify the Order in the manner suggested.
17. I also note the concerns raised regarding the previous obstructions of the route and the loss of views. However, both existing routes are currently accessible and any loss of views would be limited. I do not consider these matters would, in themselves, be sufficient to warrant a refusal to confirm the Order.

Conclusion

18. Having regard to these and all other matters raised within the written representations, I conclude that the Order should be confirmed subject to the modification described in Paragraph 8 above.

Formal Decision

19. The Order is confirmed subject to the following modification:
- In paragraph one of the recitals the words '[Planning Reference PA 10/07544]' shall be deleted.

Rory Cridland

INSPECTOR

Town and Country Planning Act 1990 Section 257
Order Plan: Re File TAD 047

Parish: CARLYON CP
Path Number: FP/426/1 & FP/426/UR

Produced by Countryside Access Team: October 2015



THE CORNWALL COUNCIL
(FOOTPATH No. 1, CARLYON (PART)
AND AN UNRECORDED PUBLIC FOOTPATH)
(OVERFLOW CAR PARK AT BEACH ROAD, CARLYON BAY)
STOPPING UP AND DIVERSION ORDER 2015

MAP NOT TO
ORIGINAL SCALE

Footpath No.3
Carlyon CP
retained

Footpath No.1
Carlyon CP
retained

Footpath No.4
(SWCP NT)
Carlyon CP
retained

Footpath No.1
Carlyon CP
to be diverted

Unrecorded Footpath
Carlyon CP
to be stopped-up

Footpath No.1
Carlyon CP
retained

Alternative Footpath
to be created

Unrecorded Footpath
(SWCP NT)
Carlyon CP retained

The Beach
Sale Site

OS SHEET SX 05/52

KEY

SCALE

1:1,250

Footpath to be Retained

Footpath to be Diverted ("A" to "B")

Footpath to be Stopped Up ("C" to "D")

Footpath to be Created ("E" to "D" to "B")

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