

Order Decision

Inquiry held on 10 October 2017

by Barney Grimshaw BA DPA MRTPI(Rtd)

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

Decision date: 01 November 2017

Order Ref: ROW/3170048

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as The Borough Council of Gateshead (Footpath Ryton 35, Crawcrook, Gateshead)(Diversion) Order 2016.
- The Order is dated 13 December 2016 and proposes to divert part of public footpath, Ryton 35, as shown on the Order Map and described in the Order Schedule.
- There were 20 objections outstanding at the commencement of the inquiry.

Summary of Decision: I propose to confirm the Order subject to a modification that requires advertising.

Procedural Matters

1. I held a public inquiry into this Order on Tuesday 10 October 2017 at Gateshead Civic Centre. I made an unaccompanied site inspection on Monday 9 October 2017 when I was able to walk the whole of the current route of the footpath and to view the proposed new route from various points. I made a further visit on 10 October accompanied by parties who appeared at the inquiry and was then able to walk the whole of both Order routes.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

3. Section 257 of the 1990 Act requires that I must consider whether it is necessary to divert the footpath in question in order to allow development to be carried out in accordance with a planning permission already given but not implemented.
4. In addition, consideration should be given to any disadvantages or loss likely to arise as a result of the diversion, either to members of the public, or to persons whose properties adjoin or are close to the existing footpaths.

Reasons

Whether it is necessary to divert the footpath to carry out the development permitted

5. Planning permission was granted to Story Homes Ltd (SHL) on 8 December 2016 for the development of 169 dwellings and associated access, car parking and landscaping on land north of the A695 at Crawcrook. Three non-material
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amendments to the permission have subsequently also been approved but these have no significant effect in respect of the existing line of Footpath 35. On my visit I noted that the development has already been commenced but not completed and the existing right of way is still available.

6. When the existing line of Footpath 35 is overlain on to the approved layout of the housing development it can be seen that the line of the path passes through 9 proposed dwellings, two of which are to be attached to other dwellings, and also crosses 2 further residential plots.
7. Accordingly, it is clear that it is necessary for the footpath to be diverted in order for the development to be carried out as permitted.

Disadvantages for members of the public, or persons whose properties adjoin or are close to the existing footpath

8. There are no properties adjoining or in close proximity to the section of the existing footpath that is proposed to be diverted. However, a number of potential disadvantages of the diversion to members of the public have been referred to in objections.
9. The proposed new footpath includes a section with a steeper gradient than the existing path. According to measurements provided on behalf of SHL the steepest gradient encountered on the section of existing path to be diverted is 1 in 16 whereas the proposed new route includes short sections with gradients of 1 in 11 and 1 in 7. It is claimed that these gradients would make the new path difficult to use by people with restricted mobility or with push chairs. However, Footpath 35 already includes two stiles, one at Point A and one further west, which inevitably restrict use of the path by some people and the topography of the general area means that there are several public footpaths in the vicinity which traverse steep gradients and more difficult terrain than the proposed new path. In these circumstances, it is my view that the gradients on the proposed new path will not result in significant disadvantage for path users.
10. The proposed new path is 69m longer than the existing path between Points A and C (309m rather than 240m). However, the proposed new footpath follows a line which appears to have been used by the public in the past and represents the shortest available route which avoids the use of estate roads in accordance with government advice¹. This additional distance would not be a significant disadvantage for path users in my view.
11. The width of the proposed new path will be 2.0m for the most part and 1.5m for the remainder. The width of the existing path is not specified in the definitive statement but it seems likely that the new path will be at least as commodious.
12. Objectors state that the diversion would mean the loss of an ancient right of way and have a detrimental effect on the historic, archaeological and environmental interests of the land. The path has been shown on Ordnance Survey maps since the mid-19th century. However, the approved residential development will inevitably alter the character of the land crossed by the footpath and its impact on historic and archaeological interests was considered before planning permission was granted. The proposed new path will pass

¹ Rights of Way Circular (1/09), Guidance for Local Authorities – DEFRA, October 2009.

around the boundary of the residential development adjacent to existing hedgerows for the most part.

13. One objector was concerned that the proposed new path would be confined between substantial hedges on one side and high fencing on the other. However, detailed plans submitted at the inquiry show that the boundary treatment between the proposed path and the housing development is varied and that roughly half of the length of the path will have only a low (knee high) fence on the estate side or be unfenced. Nevertheless, one section of the path, roughly 100m in length, will have a 2.0m acoustic fence and one side and either existing hedge or new planting on the other.
14. The proposed new path will cross the access road to the estate close to its junction with the A695 road which some objectors considered might be dangerous for pedestrians both during the construction period and after the estate is occupied. However, the approved layout of the development means that the path must cross the access road at some point and the existing path already crosses the main route used by construction traffic. The crossing point proposed will be at a traffic light controlled junction which will incorporate a pedestrian phase. There will also be a pedestrian refuge in the centre of the access road. This arrangement should make crossing the road as safe as is reasonably possible. It was further pointed out that Footpath 35 continues across the busy A695 and that works associated with the housing development will make it easier and safer to cross this road. The speed limit of the road is to be reduced from 60mph to 30mph and a pedestrian refuge provided close to the points where Footpaths 33 and 35 cross the road. In addition users of Footpath 35 will have the option of crossing the road at the traffic light controlled junction with the estate access road and re-joining the footpath by way of a new footway to be constructed on the south-east side of the A695.
15. One objector also expressed concern that as the proposed path runs close to the A695 road walkers will therefore be exposed to the effects of fumes from traffic. However, Footpath 35 already crosses the A695 and only a relatively short section of the new route will be close to but not immediately adjacent to the road.
16. In support of the Order it was pointed out that the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne which was adopted by Gateshead Council in 2015 allocated the site for housing development which would make a significant contribution to the delivery of much needed new homes in the borough. In recent years Gateshead has failed to meet targets for the delivery of new homes resulting in a shortfall in supply. If the proposed diversion is not approved this will necessitate a major re-design of the layout of the housing, which in turn will require a further planning application, cause delay and reduce the number of houses that can be built.
17. It is my view that, although the proposed new footpath will be different in character to the existing path before the housing development commenced, such a change was inevitable whatever route was chosen. The proposed new path will be steeper and slightly longer than the existing path but not to such an extent as to significantly disadvantage path users and, overall, any disadvantages are not in my view sufficient to outweigh the wider benefits of enabling the approved development to be carried out.

Other Matters

18. A number of objectors opposed the development of the land crossed by the Order route for new housing for various reasons. However, the merits of the development were considered before the planning permission was given and it is not for me to re-visit that process in any way.
19. Reference was made to the fact that the proposed housing development will include improvements to other footpaths and increased pedestrian access to some facilities. This may be the case but these improvements do not specifically result from the proposed diversion of the Order route and therefore I have given them no weight in reaching my decision.
20. In the Schedule to the Order, Part 2, it is stated that the proposed new path has "*...a varying width from 1.5 metres to 2 metres as shown on the attached map*" but in fact the map does not make clear where the width is 2.0m or 1.5m. Gateshead Borough Council, the Order Making Authority, has therefore requested that the order be modified by the substitution of a revised Order map which shows the width more clearly.

Conclusions

21. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

22. I propose to confirm the Order subject to the following modification:

Substitute the attached 'REVISED MAP' for the Order Map.
23. Since the proposed modification to specify the width of the new footpath would mean that the confirmed Order could affect land not specifically affected by the Order as submitted, I am required, by virtue of Paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990, to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Barney Grimshaw

Inspector

APPEARANCES

For the OMA

Juan Lopez	Counsel, representing Gateshead Borough Council (GBC)
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who called:

Iain Armstrong	Development Management and Spatial Planning and Environment Teams, GBC
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Rob Hindaugh	Public Rights of Way Officer, GBC
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Supporters

Jeremy Pike	Counsel, representing Story Homes Ltd (SHL)
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who called:

Sandra Manson	Planning Director, WYG Planning
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Objectors

Keith Fallows	Path user
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DOCUMENTS

1. Two bundles of documents assembled by GBC.
2. Statement of Case with 19 appendices, GBC.
3. Proof of Evidence, Summary Proof and appendices of Rob Hindaugh, GBC.
4. Proof of Evidence, Summary Proof and appendices of Iain Armstrong, GBC.
5. Statement of Case and supporting documents, SHL.
6. Proof of Evidence, Summary Proof and appendices of Sandra Manson, WYG Planning on behalf of SHL.
7. Statement of Stuart Johnson.
8. Details of a Non-Material Amendment (NMA) approved 3 October 2017.
9. Copy of large scale (1:500) plan of proposed development with existing footpath overlain, SHL.
10. Copy of large scale (1:500) plan of boundary treatments, SHL.
11. Copy of plan indicating nearby footpaths with steep inclines.
12. Closing submission on behalf of SHL.



Not to original scale

