
Order Decision

Inquiry held on 4 April 2017

by Martin Elliott BSc FIPROW

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

Decision date: 21 April 2017

Order Ref: FPS/H1840/5/7

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Public Path Diversion Order 2016 footpath No. 550 (part) North Claines Worcestershire.
- The Order is dated 23 March 2016 and proposes to divert part of footpath 550, North Claines as shown in the Order plan and described in the Order Schedule.
- There were sixteen objections outstanding at the commencement of the inquiry.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. I held a public local inquiry at the Civic Centre, Queen Elizabeth Drive, Pershore on 4 April 2017. I carried out an unaccompanied site inspection of the Order route and surrounding area on the afternoon of 3 April 2017. I did not carry out a further site visit following the close of the inquiry as there were no additional issues which required me to do so.
2. The Council did not present a case for confirmation of the Order at the inquiry but relied upon its statement of case which requests confirmation of the Order. The applicant for the Order, Taylor Wimpey UK Ltd (Taylor Wimpey) relied on its statement of case and three statutory declarations prepared in connection with the inquiry. The applicant did not call any witnesses but took questions from Mr Rees (a statutory objector also representing Fernhill Heath Residents' Association). Mr Rees raised queries in relation to the use survey carried out on behalf of Taylor Wimpey.
3. Mr Rees said that he had submitted a bundle of objection letters to the Council which he understood would have been taken into account in respect of the diversion of the Order route. The bundle was submitted in connection with the planning application for the development of the land. Mr Rees did not submit any evidence in response to the Notice of Order but made oral representations at the inquiry. My determination is based on the evidence before me measured against the relevant criteria set out below at paragraphs 4 and 5. It is for the parties to the Order to present the evidence in support of their case which should be submitted in accordance with the Notice of Order. Whilst Mr Rees expected the bundle of documents to be put before me it was for Mr Rees to submit these documents if it was his intention that they should be relied upon. Nevertheless Mr Rees accepted that it was unlikely that the bundle of objection letters written in connection with the planning application raised any different

issues to those raised in the objections to the Order. It is noted that representations to the planning application in respect of the diversion of the footpath were considered under reserved matters for the development. In reaching my decision I have had regard to all the submissions which have been put before me; these include the letters of objection to the Order. There is nothing to indicate that Mr Rees has been prejudiced noting that he should have submitted any evidence in accordance with the Notice of Order.

The Main Issue

4. The Order is made under section 257 of the Town and Country Planning Act 1990 and requires that I must consider whether it is necessary to divert the Order route in question to allow development to be carried out in accordance with the planning permission already given but not substantially completed.
5. Whilst the merits of the planning permissions granted for the site are not an issue before me, the impact of a stopping up on particular parties is a material consideration. This is reflected in paragraph 7.15 of Defra¹ Circular 1/09, which advises in respect of orders made under Section 257 of the 1990 Act:

"That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order".

Reasons

Planning permission

6. On 15 October 2015 outline planning permission (W/14/00367/OU) was granted for the erection of 120 dwellings with means of access from Dilmore Lane and the formation of an emergency access onto Firlands Close. Other matters were reserved for subsequent approval. On 4 March 2016 approval was granted (W/15/02736/RM) in respect of reserved matters (internal access, appearance, landscaping, layout and scale). There is no dispute that there is a valid planning permission for the development.

Background to the development

7. In 2008 the three South Worcestershire authorities began consultation on their new Development Plan. It was identified that Worcester City would not be able to meet its own housing needs and that the Districts of Wychavon and Malvern would need to assist in accommodating the City's housing needs. At that time the Council's preferred option for meeting this need was to allocate land for 500 dwellings at Dilmore Lane.
8. In February 2014 it became apparent that Wychavon District were unable to meet their five year housing land supply as required by the National Planning Policy Framework. Concerns were raised in respect of the level of housing

¹ Department for Environment, Food and Rural Affairs

proposed within the South Worcestershire Development Plan (the Development Plan) and the Council's housing target was likely to increase. The Development Plan was subsequently adopted with an increased housing requirement. It was evident that the Council required additional sites for development in order to meet its five year housing plan. Given that Dilmore Lane had been one of the Council's preferred sites for housing in the Development Plan the application was submitted to assist the Council in meeting its housing needs.

Whether it is necessary to divert the footpath in question to allow development to be carried out in accordance with the planning permission already given but not substantially completed

9. From my examination of the planning permissions it is apparent that the development will conflict with footpath 550 where it passes through the development land. The applicant advised that the site layout placed some 22 dwellings over footpath 550 and I concur with this view. Accordingly it is necessary to divert part of footpath 550 to allow the development to take place. Although the development of the site has commenced it cannot be said that the development is substantially complete; development is in its early stages. The existing footpath at the time of my site visit was unobstructed and available.

The effect that the Order would have on those whose rights would be affected by it, or whose properties adjoin or are near the existing path

10. The Order route leads from Rossendale Close and passes through a grass field. Footpath 550 continues through a paddock to Dilmore Lane. Objectors make the point that the route is traffic free. The proposed alternative will, in the main, follow the proposed estate roads with the western section passing over an area of public open space. The alternative route will be approximately 69 metres longer. Although the survey² carried out by the applicant suggests that use is limited the applicant fairly accepted that levels of use will be different throughout the year. Mr Rees made the point that use will be higher outside working hours and in the spring and summer. The objections refer to use by school children, local residents and dog walkers and for access to locations around the village and suggest that the route is well used. I noted on my site visit that there is a well-worn path and the path was in use by walkers. It is likely that at certain times the use of the Order route will be greater than that identified in the survey carried out by the applicant.
11. Whilst the nature and the length of the path will change, the alternative route will be surfaced and lit which will provide benefits to some users. I nevertheless accept that the loss of the rural nature of the path and its amenity amounts to a disadvantage. As regards the increase in length I do not consider that this is significant given the overall length of the route. The alternative route will not prevent users from gaining access to other parts of the village and local facilities. Further, the diversion will not prevent the use of the route as part of a circular walk. I accept that some dog walkers will need to keep their dogs on a lead when using the alternative route. However, the development includes areas of open space where dogs could be exercised off the lead; these areas also provide opportunities for other recreation and leisure.

² 27 November and 5 December 2016

12. Objections raise concerns in respect of safety as a consequence of the alternative route being adjacent to the vehicular carriageway. The applicant pointed out that highway safety was a matter considered at the planning application stage. There is nothing before me to suggest that the alternative route is unsafe such that the Order should not be confirmed. Nevertheless, the alternative route will, in parts, run adjacent to a vehicular carriageway and will not be traffic free.
13. Many of the objections refer to the Order route as being an old established way with historic roots. Mr Rees pointed out that the route was brought into use to get to the church and advised that the route was shown on Ordnance Survey maps dating from the 1800s. Whilst the Order route may have historical origins there is nothing before me to suggest that the route is of such historic value that its diversion amounts to a significant loss. The objections also make reference to views of Upper Tapenhall House, a grade II listed building. Mr Rees contended that the views of the building were uplifting and one of the reasons for using the route. Whilst views will not be possible from much of the alternative route, views will be available from the section of alternative route (I to J on the Order map) where it passes through an area of public open space. Given that views will be available I do not consider that the loss of views of the property is significant.
14. In connection with the footpath diversion Order Taylor Wimpey have entered into a public path creation agreement³ with Worcestershire County Council and Wychavon District Council. This provides for the creation of an additional footpath leading around the northern side of the development site passing through areas of public open space. I was presented at the inquiry with the agreement signed and sealed by all parties (inquiry document 2). The applicant contended that the agreement was a material consideration in the determination of the Order. Having heard the submissions of Mr Manley QC at the inquiry I agree with that view.
15. Mr Rees contended that the agreement was presumptuous and premature and submitted that it was only temporarily expedient having regard to phase 2 of the development. Similar points were made in some of the objections. Whilst I note this view my decision must be based on the current circumstances. The footpath subject to the agreement will provide an alternative traffic free route to that provided by the Order. As such it provides additional benefits although, in my view, those benefits are not significant given that much of the route passes over land which will be public open space and therefore accessible to the public. It is noted that both the Ramblers' Association and the Open Spaces Society support the additional footpath and it is partly on this basis that the groups do not object to the Order.
16. Having regard to all of the above, there are a number of disadvantages arising in consequence of the Order. However, I do not consider, on balance, that these disadvantages outweigh the advantages conferred by the Order. The Order will allow the development to be carried out in accordance with the granted planning permissions and the development will assist in meeting the Council's housing requirements as informed by the Development Plan.

³ Under section 25 of the Highways Act 1980

Alternative proposals

17. A number of objections suggest alternative proposals; this includes a buffer on the southern part of the site where the footpath could be accommodated. However, I am unable to give these alternatives further consideration as it is not within my remit to modify the planning permissions. I am required to consider the Order before me measured against the relevant criteria set out at paragraphs 4 and 5 above.

Other Matters

18. A number of objectors contend that the development and proposed diversion does not accord with the local Neighbourhood Plan. Whilst this may be the case, planning permission has been granted for the development and the merits of the development are not for my consideration.
19. Concerns are also raised by objectors as to the actions and consultation process of Taylor Wimpey. These are not matters for my consideration.

Conclusions

20. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should be confirmed.

Formal Decision

21. I confirm the Order.

Martin Elliott

Inspector

APPEARANCES

For Wychavon District Council:

Mr P Hill Principal Legal Officer

For the Applicant:

Mr D Manley QC Instructed on behalf of Taylor Wimpey

In opposition to the Order:

Mr M Rees Statutory objector and Chairman of Fernhill Heath Residents' Association.

Documents handed in at the inquiry

- 1 4 No. photographs submitted by Mr Rees
- 2 Copy of sealed public path creation agreement

MAP NOT TO
ORIGINAL SCALE

Existing Footpath to remain
Existing Footpath to be stopped up
Diverted Footpath

Reference Points

	X	Y
A	3866422	2597262
B	3866433	2597264
C	3867113	2597264
D	3866600	2597264
E	3867972	2597264
F	3867470	2597264
G	3866723	2597264
H	3866638	2597264
I	3864636	2597264
J	3864274	2597264

Stopping Up & Diversion of Footpath 550 North Claines, Worcester.

Taylor
Winney

LAND AT DILMORE LANE
FERNHILL HEALTH.

Shoppers Up & Diversion of 1,150; Footpath 550

2007	2008	2009	2010
2007	2008	2009	2010