

---

## Order Decision

Site visit made on 4 April 2017

**by Helen Heward BSc (Hons) MRTPI**

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

**Decision date: 17 May 2017**

---

### **Order Ref: FPS/H4505/3/4**

- This Order is made under Section 118 of the Highways Act 1980 ('the 1980 Act') and is known as the Borough Council of Gateshead (Footpaths Felling 14 and 15) Public Path Extinguishment Order October 2016.
- The Order is dated 26 April 2016 and proposes to extinguish the public rights of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Gateshead 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 the modification set out in the Formal Decision.**

---

### **Procedural Matters**

1. Gateshead Council is the Order Making Authority (OMA) and supports the Order which is submitted to the Secretary of State for Confirmation.
2. The OMA received eleven objections from members of the public, one of which the OMA deemed to be invalid and eight of which were formally withdrawn. No-one requested to be heard with regard to this Order and I dealt with it by way of the written representations.
3. I undertook an unaccompanied site visit on 4 April 2017 when I was able to walk the Order routes (as available) and adjoining and alternative paths across an area of land roughly bound by Reay Street, Joel Terrace, Brack Terrace, Bill Quay and the rear of properties on Marian Drive.
4. The Council is landowner of the majority of the land that the Order routes cross. The routes cross pockets of unregistered land of unknown ownership. An application by the OMA to dispense with requirements to serve notice on every owner was granted by the Planning Inspectorate on 13 October 2015.
5. The Notice of Making sent to consultees and ward councillors erroneously included the words '*important this communication affects your property*', but the accompanying copy of the Order and plan clearly identify the affected land and describe what is intended to be extinguished. I am satisfied that no-one will have been prejudiced and that the serving of the Order was adequate and fulfilled the legal requirements.

### **Main Issues and preliminary matters**

6. In order to confirm the Order I must be satisfied that it is expedient to stop up the paths having regard to:
-

- the extent that it appears likely that the footpaths in question would, apart from the Order, be likely to be used by the public, and:
  - the effect that the extinguishment of the footpaths would have as respects land served by them, account being taken of the provisions as to compensation.
7. I must also have regard to the material provisions of any public rights of way improvement plan ('ROWIP') which has been prepared for the area in which the path lies, and government advice contained in Circular 1/09.
  8. The question of the expediency of stopping up the paths enables a variety of matters to be taken into account. Whilst the OMA must consider the need for the public rights of way at the time of making the Order, I must consider the question of likely future use of the paths, and in so doing I should ignore any temporary obstructions to use.
  9. The Council clarified that whilst the public freely use the open grassed area of land that Footpaths Felling 14 and 15 cross, there are no other designations or rights on that land that the Council is aware of.<sup>1</sup>
  10. The Council confirmed that two hard surfaced routes running through the area are part of Bridleway Felling 50 at Bill Quay (Felling 50/1 and Felling 50/5).<sup>2</sup>

## Reasons

### ***The extent to which the footpath would be likely to be used***

11. Footpaths Felling 14 and 15 are situated within a large area of open grassland and woodland blocks which is part of a broadly northwest facing slope above the River Tyne. It provides an open green space within the built up area and forms part of a wider network of public access along the south side of the river.
12. Bridleway Felling 50/5 runs along the 'top' edge of the slope close to the rear of dwellings on Marian Drive. Bridleway Felling 50/1 runs along the 'lower' edge adjacent to scrub and woodland. I observed both of these routes being very well used by the public, including dog walkers, cyclists, adults and children.
13. Footpaths Felling 14 and 15 broadly cross the grassed slope between the two bridleway sections. At the time of my visit a number of people were walking in this area and I observed that it is criss-crossed by several well-trodden and clearly identifiable paths. However, I found no evidence of trodden tracks along the routes of Footpaths Felling 14 and 15 as shown on the Order Map. Both routes appeared quite unrelated to present day landscape features and both are partially obstructed by young mature woodland blocks with no identifiable accessible routes through. I did not see anyone walk the route of these paths.
14. The start of Footpath Felling 14 (Point A on the Order Map) appears to be in an area of rough grass, unrelated to any other road or path and not marked by any identifiable feature on the ground. Similarly, Footpath Felling 15 (Point C) terminates at an unmarked spot along the route of Bridleway Felling 50/5.

---

<sup>1</sup> email dated 7 April 2017

<sup>2</sup> Public Path Creation Order ref TS/821 relating to Bridleway Felling 50 at Bill Quay, made by Gateshead Council, dated 3 November 2016, confirmed 6 April 2017 and advertised 11 April 2017; email dated 12 April 2017

15. The OMA submits that the public confused Footpaths Felling 14 and 15 with other paths in the area, and that when this was explained eight out of ten valid objections were withdrawn. They further submit that the fact that the Council has never received any objection about the obstructions is evidence of them not being used. From my observations I agree that it would be quite easy for people to be confused as there are no signs of the routes to be extinguished. Having studied the objections I also agree that it is likely that the objector who submits that the paths are well used (including by cyclists) is, in all probability, likely to be referring to hard surfaced Bridleway routes Felling 50/1 and 50/5.

#### *Footpath Felling 14*

16. The start of Footpath Felling 14 (Point A on the Order Map) appears quite random in the landscape and is unrelated to any other public right of way. The path crosses the slope in a broad arc to join Footpath Felling 16 (Point B on the Order Map). It has a mainly open aspect and offers long views.
17. On my visit I found two easily identifiable, accessible and alternative routes. Firstly by walking a few metres west from Point A to Joel Terrace. Then right and north to join the western end of Bridleway Felling 50/1. Following this hard surfaced route northeast to the point where it meets Footpath Felling 16. Then sharp left onto Footpath Felling 16 for a few metres to reach Point B. Alternatively, continue along Joel Terrace (past the bridleway) to Reay Street. Then along Reay Street and onto Footpath Felling 16 to Point B.
18. Both alternative routes are no less convenient, being of roughly the same length and not materially longer, than the route of Footpath Felling 14 which is to be extinguished. Joel Terrace and Reay Street appear only lightly used by traffic. Joel Terrace offers wide views and Bridleway Felling 50/1 has a hard surface. The route along Reay Street is soft under foot and quite enclosed by woodland. All in all both are quite pleasant, albeit different in ambience.

#### *Footpath Felling 15*

19. Footpath Felling 15 rises up the slope from Point B on Felling Footpath 16 to an unmarked spot along the route of Bridleway Felling 50/5 (Point C on the Order Map). It offers a short and direct footpath link between both Felling Footpath 16 and Bridleway Felling 50/1 with Bridleway Felling 50/5. It provides a route directly across the slope, broadly in the middle of the area of green space and offers a quickly changing wide variety of views.
20. On my visit it was evident that there are several well-trod routes across the grassed slope that the public could, and do use, to get from the bottom to the top of the grassed slope and between the bridleways. Such routes would offer no less convenient alternative routes between Points B and C on the Order Map. I observed a number of people traverse the grassed slope between the bridleways in the vicinity of Footpath Felling 15.
21. From the evidence provided, it appears that only Footpath Felling 15 affords a public right of way across the area. There is nothing to say that other public access could not be withdrawn. Therefore, in considering the likelihood of future use, I must disregard these informal grassed paths across the slope.
22. One alternative would be to follow Footpath Felling 16 southwest to Reay Street, turn left along Joel Terrace to the junction with Brack Terrace. Then along Brack Street and east to follow Bridleway Felling 50/5 from the transport

terminus to reach Point C. Another, better surfaced option, would be to walk a few metres northeast of Point B to join Bridleway Felling 50/1 and turn left, then follow the bridleway to Joel Terrace and turn left, and proceed as before. However, both of these alternative routes would be considerably longer and much less convenient than Footpath Felling 15. Both are very different in ambience with neither offering the same experience of crossing the scarp slope of the grassed hillside in the middle of a large open space.

#### *Conclusions on the first issue*

23. From the evidence before me and my observations on site I agree with the Council that Footpath Felling 14, (Points A to B) is not used. I find that it serves little purpose and that there are reasonable alternative options available suitable for all ages and abilities which are generally both as convenient and commodious as this part of the Order Route. I conclude that Footpath Felling 14 is unlikely to be used by the public.
24. Footpath Felling 15, (Points B to C) serves a purpose of connecting Felling Footpath 16 and Bridleway Felling 50/1 with Bridleway Felling 50/5 and offers a path directly across the middle of the grassed scarp slope. There are no reasonable alternative options that are as convenient as this. I conclude that Footpath Felling 15 would be likely to be used by the public if unofficial routes were removed and therefore find that the Council's reason for making this part of the Order, that the footpath is not used, does not justify the extinguishment.

#### ***The effect of extinguishment upon land served by the Order Route***

25. The land uses that the paths originally served have ceased. Aside from the Council, there are no known interests in the land that the extinguishment would affect. As the affected landowner of the majority of the land that the Order Route crosses, the Council has no objection to the closure of the paths and does not wish to pursue compensation. I conclude that extinguishment of Footpaths Felling 14 and 15 would have no adverse effects upon land served by them.

#### ***Other Matters - Historical connections***

26. An objector submits that paths can be many hundreds or thousands of years old and should only be closed if dangerous.
27. Footpath Felling 14 formerly terminated at Ann Street. The OMA advises that the houses and buildings that the Order Route once served were demolished 15 years or more ago. An extract from the 1965 Definitive Map indicates that the route of Bridleway Felling 50/5 was formerly a railway and that Footpath Felling 15 continued beyond Point C and across the line. The railway has gone, the back gardens of dwellings on Marian Drive provide a continuous boundary and there is no evidence of the path continuing. However, I am not persuaded that there is evidence to say that the paths follow ancient or historically significant routes, and I attach little weight to this matter.

#### **Conclusions**

##### *Footpath Felling 14*

28. I conclude that the Council's reasons for making the Order to extinguish Footpath Felling 14, (Points A to B of the Order Route), that the footpath is not

used, is justified and that Footpath Felling 14 is unlikely to be used by the public.

#### *Footpath Felling 15*

29. In respect of extinguishment of Footpath Felling 15, (Points B to C of the Order Route) I conclude that this path would be likely to be used by the public if unofficial routes were removed. Therefore I find that the Council's reason for making this part of the Order, that the footpath is not used, does not justify the extinguishment.
30. Accordingly, I conclude that the Order should be confirmed with modifications so as to confirm only the extinguishment of Footpath Felling 14 (Points A to B on the Order Map).
31. Having regard to paragraph 2 (3) of Schedule 6 to the 1980 Act, I am not required to advertise or give notice of the proposal to modify the Order in this way because the Order to be confirmed would not affect land not affected by the Order as submitted.

#### **Formal Decision**

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

- (i) Amend the title page to read "Relating to the extinguishment of Footpath Felling 14"
- (ii) Amend the heading of the Order to read "THE BOROUGH COUNCIL OF GATESHEAD (FOOTPATH FELLING 14)"
- (iii) Amend paragraph 1 to read "the public right of way over the land situate at Bill Quay, and shown by a continuous bold line on the map attached to this order shall be extinguished after 7 days from the date of confirmation of this order."
- (iv) In the schedule delete "Footpath Felling 15" and delete in its entirety the following paragraph beginning "From point B.."
- (v) Amend the title of the map to "Extinguishment of Footpath Felling 14 Bill Quay, Gateshead."
- (vi) Delete "C" on the map
- (vii) Delete "Felling 15 B-C" in the map title box.
- (viii) Change the colour of Footpath Felling 15 from black to the colour used to indicate 'other Gateshead Footpaths'.

*Helen Heward*

Inspector



