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## Order Decision

Site visit made on 24 May 2017

**by Joanne Burston BSc MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 07 July 2017**

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### **Order Ref: FPS/D0840/4/16**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Cornwall Council (Footpath No.5, Illogan (Part )) (Portreath Phase 2) Public Path Diversion Order 2016.
- The Order is dated 27 April 2016 and proposes to divert the public right of way 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.**

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### **Procedural Matters**

1. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. Accordingly, I made an unaccompanied site visit to the area on Tuesday 24 May 2017.
2. At the time of my site visit footpath No.5, between points A and B<sup>1</sup>, was heavily overgrown. However, I was able to walk both the existing route and the proposed diversion.
3. A public right of way cannot be diverted wholly on to a route which is already a right of way. The existing and proposed footpaths lie within a development site but, as the houses and associated infrastructure have only recently been constructed, the proposed route has not been available for use until recently. I have no evidence that the residential estate road, which the diverted route would follow, has been subject to general public use or adopted by the highway authority. It appears that the only users of the route at present would be the new occupiers of the houses. Accordingly, I am satisfied from the evidence in this case that the proposed diversion is not an existing public right of way.

### **Main Issues**

4. The Order has been made in the interests of the landowner. Section 119 of 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.
5. 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

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<sup>1</sup> as shown on the plan attached to this decision.

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.

6. 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 footpath in question should be diverted***

7. The existing footpath commences from the public highway (the C0027) and travels in a broadly east west direction from this point. From point 'A' the existing route runs to the rear of a number of dwellings, referred to as plots 7 - 24, and separated from them by tall, close boarded timber fencing. To the south is a multi-use trail known as the '*The Mining Trail*', which is also separated from the existing footpath by a mature hedge. At point 'B' the footpath emerges from the rear of the dwellings and continues along a grass verge.
8. The Order is made to address security and privacy of the occupiers of the properties associated with plots 7 - 24. Furthermore, it has been put forward that the characteristics of the existing footpath would encourage anti-social behaviour and criminality. At the time the planning application was made for this residential development the Devon & Cornwall Police Architectural Liaison Officer stated that "*From a designing out crime perspective the footpath raises issues of rear garden security especially as the path in the summertime will presumably be rather enclosed.... It would be better from a designing out crime perspective for the footpath to be diverted through the development in front of the dwellings.*"
9. It is acknowledged that the majority of the recently constructed dwellings have now been sold. Nevertheless, the ownership of the land, over which the existing path is located, will remain with the developer. The developer retains a responsibility to ensure that new occupiers of the properties are unaffected by any issues to do with the use of the footpath. I also accept the objectors' comment that the existing fence would provide security to the properties, however this fencing significantly encloses the footpath, which increases the perception of the use of the path for antisocial behaviour.
10. Having regard to the above, I am satisfied for the reasons given that it is expedient in the interests of the landowner that the footpath be diverted.

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

11. I found much of the existing footpath between points 'A' and 'B' to be heavily overgrown by vegetation and because of this it appeared to be very narrow and unattractive to potential users. This is consistent with the views expressed by a supporter of the Order, who stated that "*the footpath in question is more of a navigational hazard than a convenient path*".
12. To remedy this, the proposed route of the new path will be to the side and front of plots 7 - 24, along the pedestrian footway. There is little to choose between the two routes in terms of convenience, although due to the surface

conditions on the proposed route the path will be easier to use throughout the year.

13. In terms of length, the proposed route will be some 72 metres longer. However I do not consider this is significant in terms of what is likely to be a much longer recreational route, using this and other paths in the area.
14. On balance, I conclude that the new footpath will not be substantially less 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*

15. From point 'A', the existing path has a more natural environment due to the mature hedgerow to the south. However it is also enclosed which prevents views out across the surrounding landscape. The objector states that "*those walking the whole length of footpath 5 and beyond are likely to be interested in the rural surroundings and will have no desire to be sent down a suburban estate road*". Nevertheless, the proposed route is more open, passing by green spaces, interesting architecture and has glimpsed views of the sea.
16. I accept that the diversion will follow a more circuitous route. However the route would be appropriately waymarked and the Ordnance Survey will record the revised route on their map publications. In any event, the proposed diversion would permit those people living in the new houses to easily access the wider rights of way network.
17. In any event, '*The Mining Trail*', which I accept is only a permitted path maintained by the Council, runs along a similar alignment to the existing footpath and would facilitate a direct route to point B if walkers so desired.
18. On balance, 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*

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

***Rights of way Improvement Plan ('ROWIP')***

20. The Council's ROWIP draws broad strategic conclusions to identify changes to the rights of way network within the County. The proposed diversion appears compatible with the provisions of the ROWIP.

***Whether it is expedient to confirm the Order***

21. 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 of the increase in length and the circuitous nature of the path they do not amount to being classed as substantial.

22. 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 increased opportunities for local residents to access the rights of way network and that the diverted route would be fully accessible all year round. Therefore, on balance, 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**

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

### **Formal Decision**

24. I confirm the Order.

*Joanne Burston*

INSPECTOR

## Appendix: Order Map

Map not to original scale

