

Order Decision

Site visit made 17 October 2017

by Helen Heward BSc Hons MRTPI

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

Decision date: 23 November 2017

Order Ref: ROW/3172326

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as the County Council of Durham (Unregistered footpaths at the former 'Inn on the Green', Waldrige Parish) Public Path Stopping Up Order 2016.
- The Order is dated 23 June 2016 and proposes to stop up two unrecorded footpaths as shown on the Order plan and described in the Order Schedule Part 1.
- There were three objections and representations outstanding at the time when Durham County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Preliminary Matters

1. Durham County Council, the order-making authority ("the OMA") supports the application. The OMA states that the two footpaths identified in the Order are not recorded on the Definitive Map and Statement ("the DMS"). No action was taken to register the footpaths but the OMA advises that there is evidence of historic usage of both footpaths for over 20 years and that they have acquired right of way status. The landowners did not contend this and made the application to stop up the footpaths.
2. The parties have agreed that the case can be determined by the written representations procedure. As no requests for an accompanied visit were received I carried out an unaccompanied visit.
3. The applicants' statement of case references points along the Order route footpaths differently to those given in the description in the Order Schedule and as shown on the Order plan. In this decision all references are to points of the Order routes as referred to in the Order.

Procedural Matters

4. Section 257(1) of the 1990 Act provides for the stopping up or diversion of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the 1990 Act. Therefore to confirm the Order I must be satisfied that planning permission in respect of the development has been granted, and that it is necessary to authorise the stopping up in order to enable the development to be carried out in accordance with that planning permission. This latter requirement cannot be satisfied if the permission has been implemented. Case
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law has established that some substantial part of the development permitted must remain to be carried out¹.

5. In considering whether or not to confirm an order, I have discretion to consider the advantages and disadvantages arising from the stopping up of the footpaths in general, and any disadvantage or loss which might be suffered by those entitled to the rights that would be extinguished.
6. In this case there are several footpaths, including the Order routes, which provide links between the village (east of Waldrige Road) and Waldrige Fell and allotments (to the west). The main objection raised is the effect of the Stopping Up Order on the safety of walkers crossing Waldrige Road.

Main Issues

7. The main issues in this case are (i) whether the Order is necessary to enable development to be carried out, (ii) whether development is substantially complete, and (iii) the effect of the Order on the safety of those whose rights would be extinguished by it.

Reasons

Whether the Order is necessary to enable development to be carried out

8. Durham County Council planning permission reference DM/15/02303/PA grants permission to demolish the former public house building and erect on the same plot a two storey dwelling with detached garage. The dwelling would be situated more or less on the same site as the existing building. The associated garden would occupy most of a large grassed frontage, and a garage and paddock would occupy an area to the rear laid out as a carpark.
9. The first Order route, footpath A-E, starts from the northeast corner of the grassed area adjacent to Waldrige Road (point A on the Order plan). It runs west to point B, continues around the southern side of the building, through points C and D, and across a carpark to point E on the southwest boundary where it's end meets Waldrige Parish Footpaths 21 and 26 (FP21 and FP26). The second Order route, footpath F-B, starts from point F on the north side of the grassed frontage adjacent to Waldrige Parish Footpath 22 (FP22). It runs southwest to join the first footpath at point B.
10. I am satisfied that the planning permission is extant and directly relates to the land crossed by the Order routes.
11. The OMA considers that the Order routes would conflict with the approved layout of the garden, hardstanding areas and fencing around the garage and paddock. The applicants also submit that the approved development would obstruct both footpaths, including that a pavilion would be across footpath F-B and that one corner of the dwelling would straddle the routes.
12. There is insufficient evidence to enable me to conclude on all of these details. However, documents relating to the planning permission indicate that the site of the dwelling and associated garden and paddock would be fenced using 2.5m mesh fencing to the rear and a 1.2m post and a wire fence at the front. Therefore, if the footpaths are not stopped up the planning permission cannot be implemented as footpaths A-E and F-B would both be within the site and

¹ *Ashby and Dalby v SSE and Kirklees Metropolitan District Council* [1978] 40 P & CR 362, (CA) [1980] 1 WLR 673, [1980] 1 All ER 508

blocked by fences at their respective start points, A and F, and at end point E. For these reasons, I am satisfied that it is necessary to stop up both footpaths A-E and F-B to enable development to be carried out in accordance with planning permission DM/15/02303/PA.

Whether development is substantially complete

13. I was able to walk both footpaths A-E and F-B and saw nothing to suggest that any significant work has been undertaken in relation to the planning permission. I am satisfied that development is not substantially complete.

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

14. The parties broadly agree that to take the Order route footpaths walkers from the village generally cross Waldrige Road in the vicinity of point A. I shall call this the northern crossing. By doing so they can follow footpath A-E from point A, or take a short section of FP22 and follow footpath F-B.
15. If the Order route footpaths were stopped up, one alternative route that a walker might take would be to stay on the metalled footpath on the east side of Waldrige Road and walk south for roughly 100m where they could cross the road to join FP26. I shall call this the southern crossing. They could then follow FP26 along the access road on the south side of the site, to the allotments and on to point E and Waldrige Fell. The applicants submit that this route is superior in safety and accessibility to the Order routes.
16. However, the objectors consider that the southern crossing is more dangerous than the northern crossing. The main concern is the available visibility of approaching nearside traffic from the right. The worst case scenarios are for walkers crossing east to west at the northern crossing and crossing west to east at the southern crossing. The objectors argue that at the northern crossing walkers can achieve good clear vision and a sightline of approximately 150m or more to the right.
17. There is no official crossing. I walked into and out of the village and crossed the road at different points. I do not doubt that people cross at more than one position. But I agree with the highway engineer for Durham County Council (the highway engineer) that the most likely crossing point would be opposite the junction, adjacent to Point A and where FP22 meets Waldrige Road.
18. When I crossed here I found that my view to the right was restricted and partly obstructed. The highway engineer measured the visibility as 47m. One objector argues that cars can be seen approaching and going into a dip and so a person crossing would only have to wait a short period of time for it to be safe to cross. However, I did not find that to be so easy and had to step back on to the kerb to seek refuge from a car that I had not seen.
19. The objectors argue that at the southern crossing visibility to the right is worse. One estimates it to be about '50 yards'². The highway engineer noted that the gradient is downhill and that visibility increases in winter when vegetation dies back. He measured it as 54m but advised that with some modest cutting back it could be increased to approximately 61m, and concluded that visibility is better here than at the northern crossing.

² Approximately 46m

20. I understand that some works to trees and vegetation to improve the visibility were subsequently undertaken, and one objector noted that conditions had slightly improved. Trees and vegetation can grow back. I cannot say if visibility was 61m when I visited, but I did find it easier to see approaching nearside traffic at the southern crossing than at the northern crossing.
21. FP26 runs along an access road so a person waiting to cross Waldrige Road at the southern crossing would be standing on a road used by vehicles. From my observations of this short cul-de-sac and the evidence before me, it does not appear to be heavily trafficked. Submissions are made about traffic speeds but I noted that both crossing points are within a 30mph zone.
22. Two objectors state that they would withdraw their objection if a new section of footpath is provided along the site frontage to connect point A to FP26 on the west side of the road, so that walkers could continue to cross at the northern crossing. However, the applicant has not proposed this, the OMA did not conclude that it was necessary, and it does not form part of the Order that is before me.
23. I conclude that the stopping up of the Order routes footpaths A-E and F-B would not adversely affect the safety of those whose rights would be extinguished by it.

Other Matters

24. Footpath A-E crosses a large hard surfaced carpark to reach its end and is of low amenity value. Alternatively, FP26 continues around the edge of the carpark to reach Waldrige Fell and Point E. If the planning permission is implemented this section of FP26 would be partially enclosed by tall mesh fencing and a garage wall. It is already largely enclosed on the other side. Overall the route along the east side of Waldrige Road and FP26 would be generally as adequate as the Order route footpaths in terms of level, accessibility and amenity as the Order route footpaths.
25. The OMA and applicants refer to an alternative route along FP22 past the north side of the site to a set of steps which lead to point E and Waldrige Fell. The steps are steep and high. It does offer another route but for some it would not be nearly as accessible, convenient or helpful as the Order route footpaths.
26. One objector would withdraw their objection if a new footpath is constructed from FP22 around the north side of the dwelling and paddock to create a link to the 'old football field', and to compensate for the loss of the footpath across the carpark. A hand drawn sketch indicates that it could avoid the steps and provide an additional link to Waldrige Fell. The applicants do not support it, the OMA did not conclude that it was necessary, and it does not form part of the Order that is before me.
27. It is submitted that FP21 and parts of FP26 are heavily overgrown, impassable in places, overrun by vermin, and flea infested. These are largely maintenance matters for the Council. There is scant evidence relating to rights of keeping horses on the site or the status of any of the land as Common Land. The planning permission provides for the enclosure of the land, creation of a paddock and garden, and includes specifications for boundary enclosures. It is not within my jurisdiction to reopen the merits of the planning application.
28. Concerns about the conduct of the applicants are not matters to which I attach weight. Letters from three persons in support of the Order have been received.

29. It is argued that an earth mound placed near point C blocks part of Order route A-E and that works have been undertaken to divert the Order route footpaths closer to the southwest corner of the existing building. Obstruction would be a matter for the Highway Authority and there is no evidence to say that the Order route footpaths A-E and F-B are not correctly described in the Order.

Conclusions

30. It is necessary to stop up the footpaths to enable development permitted by planning permission DM/15/02303/PA. Development is not substantially complete.
31. If the Order is confirmed walkers could reach the allotments and Waldrige Fell via alternative routes. In particular an alternative route exists along Waldrige Road and FP26. I have found that the safety of those whose rights would be extinguished by the stopping up of the Order route footpaths A-E and F-B would not be adversely affected by following this route.
32. Therefore, and having regard to all other matters raised in the written representations, I am satisfied that the Order will not result in a loss of safety, or otherwise have a detrimental effect upon those persons who presently use the Order routes. I conclude that it is expedient that the Order should be confirmed.
33. Representations were made to the effect that the applicants' right for respect for private and family life under Article 8 of the Human Rights Act 1998 would be violated if the Stopping Up Order were not confirmed. However, as I have concluded that the Order should be confirmed, my decision would not lead to any violation.

Formal Decision

34. The Order is confirmed.

Helen Heward

INSPECTOR



IAN THOMPSON
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The County Council of
Durham (Unregistered
footpaths at the former
'Inn on the Green', Walldridge
Parish) Public Path Stopping
Up Order

Footpaths to be Stopped Up

Scale 1 : 1,250

Public Rights of Way /
Highways not affected by
the proposal

--- Footpath
--- Adopted
--- Highway

Drawn: 14 June 2016

Postcode: DH2 3RY

