

Order Decision

Inquiry held on 4 July 2017

by Heidi Cruickshank BSc (Hons), MSc, MIPROW

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

Decision date: 03 August 2017

Order Ref: FPS/B5480/5/2M

- This Order is made under Section 257 of the Town and Country Planning Act 1990. It is known as London Borough of Havering (Footpath 198) Stopping Up and Diversion Order 2015.
- The Order is dated 8 December 2015 and proposes to stop up footpath 198 and provide an alternative route, as shown in the Order map and described in the Order Schedule.
- In accordance with Paragraph 3(6) of Schedule 14 to the Town and Country Planning Act 1990 notice has been given of the proposal to confirm the Order subject to modification. Eight objections were submitted in response.

Summary of Decision: The Order is confirmed subject to modifications set out in the Formal Decision.

Preliminary Matters

Dealing with the Proposed Modifications

1. This Order was initially dealt with by way of the written representations procedure. As a result of the matters raised, and following a site visit on 13 July 2016, modifications were proposed to the Order to record a width of 2 – 2.95 metres on the proposed alternative route, A – B¹; and, make minor modifications to the description of the alternative highway to identify the connections to existing public highways.
2. The Interim Order Decision (“the IOD”), issued on 25 July, proposing these modifications led to further objections and representations. Additional objections and representations were received in the lead up to the Inquiry.
3. It is usually the case that the Inspector who proposes modifications would deal with the Order through to its conclusion. However, in this case the Inspector was due to retire before the matter could be completed and so I have taken over the determination of this Order. It is fair to say that, as a result, greater leniency has been given to both sides in presenting ‘new’ evidence in relation to the Order as a whole, rather than concentration on the proposed modifications as would normally be expected at this stage.

The Order map

4. Concerns were raised that the Order map was incorrect by reference to either historical changes or the continuation of the National Cycle Network (“NCN”) on the Route 136 (“NCR136”). I am satisfied by reference to the Definitive Map

¹ Points A, B and C are shown on the Order map

and Statement that the Order map is correct. The continuation of the NCN beyond point A is a not part of this Order.

Procedural Matters

5. I made an unaccompanied site visit, observing the general use of the existing and proposed routes, between 3 and 4pm on Monday 3 July 2017. I held a public Inquiry into the Order on 4 July. Following discussion with the parties at the close of the Inquiry it was agreed that there was no need for a further accompanied site inspection.

Main Issues

6. The Order was made because it appeared to the London Borough of Havering, the order making authority ("the OMA") that it was necessary to stop up and divert the relevant part of the footpath to enable development to be carried out in accordance with planning permission granted under Part III of the Town and Country Planning Act 1990 ("the 1990 Act").
7. Section 257 of the 1990 Act requires that, before confirming the Order, I must be satisfied that that it is necessary to stop up and divert the footpath in question to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
8. Even if I were to find it necessary to stop up or divert the path to allow implementation of the permission my confirmation of the Order is discretionary. In exercising this discretion I must consider the merits or disadvantages of the proposed diversion and stopping up in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be altered by it.

Reasons

Whether it is necessary to stop up and divert the footpath to enable development to be carried out

9. Planning permission was granted on 2 April 2015 under reference P1220.14 for development at the former Old Windmill Hall Site, St Mary's Lane, Upminster for the erection of a three storey building comprising 22 retirement living apartments with communal facilities and landscaping ("the development").
10. As found in the IOD, I am satisfied the approved plans show that the development could not go ahead unless the relevant part of Footpath 198 ("FP198"), passing over the site, was stopped up.

Whether the development is substantially complete

11. The development has not been started and, therefore, this matter is satisfied.

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

12. The representative of the Friends of Upminster Park ("FOUP") fairly indicated that FOUP had objected at every stage to the proposed changes to the land crossed by FP198, as they were against the principle of the development. Whilst I recognise that this may colour the evidence, the same may be true of those who would wish to see the Order succeed so that the development could

go ahead. I approach the evidence as a whole aware of such potential bias and giving appropriate weight to the matters raised on both sides.

13. The main matters of concern raised in objection related to the shared use of the alternative route, A – B, NCR136. This matter was considered in the IOD and led directly to the proposed modification to the width. This was to record the minimum 2 metres identified in the *"Sustrans NCN guidelines: traffic-free paths."* Although argued that this was only guidance, not standards, I am satisfied that I should take some account of this.
14. Despite the comment that 2 metres related only to canal paths I am satisfied that Figure 8.1 *"Shared Cycle Tracks/Footpaths/Bridleways"* is relevant to the Order. The guidance shows 3.0m as preferable with 2.0m an absolute minimum; the proposed modification records the tarmac route on the ground, meeting this minimum requirement.
15. The guidance indicates that *"In general cycle routes through such public spaces (for example part of an existing path through a park) are likely to be shared with pedestrians. They should be well defined with pedestrians having the remainder of the area for their continued exclusive use."* Despite concerns that cyclists, particularly children, might cycle on the grass I consider that NCR136 in this location follows the guidance, being a defined tarmac route on the edge of Upminster Park ("the Park"), which is otherwise left for pedestrians.
16. Concerns were raised that the desirable minimum clearance of 0.5m to objects on the edge of a shared cycle track might not be met in relation to features such as park benches, lighting columns and litter bins alongside the route. I note that this is 'desirable' and, therefore, may not be met in some cases. Having observed the use of the route I am satisfied that the adjacent features do not cause an unacceptable risk to users.
17. The desirable 0.75m minimum to boundary walls and frontages is met, which I consider relevant to the discussion about the width that would be left near point B once the proposed development was in place, with concerns that an alleyway would arise. The supporters provided copies of the footprint of the planning permission, which indicates that the building does not abut directly onto the edge of the development site, alongside NCR136.
18. In relation to the concern of increased use of NCR136, due to people being diverted from FP198, I note the measurements made for McCarthy & Stone on Thursday 25, Saturday 27 and Sunday 28 May 2017. Although suggested that the weekend chosen might not have shown 'typical' use, the general findings, that most use is already taking place on NCR136 rather than FP198, accord with the observations in the IOD, of a supporter to the Order and my own site observations made on the day before the Inquiry.
19. It is clear that some people use FP198, at least in part, as an access to and from the Park; however, the numbers are low in comparison to the use of NCR136. I accept the evidence of the supporters to the Order that even if all those using FP198 were to move onto NCR136 there would only be a small increase in use. The greatest change would occur on a weekend, when more people as a percentage of the total use FP198, however, the overall use is lower at the weekend in comparison to the weekdays and so the effect would not be significant. I also agree that not everyone will necessarily divert onto

- NCR136 anyway, given the other existing alternative through the New Windmill Hall carpark, situated to the west along St Marys Lane.
20. The current cycle use is low, around 4 per hour over a 12 hour period. I note the argument that the failure to advertise the current byelaws, allowing cycling on the designated route within the Park, may lead to an increase in cycling, once updated. However, I consider that the NCR136 is signed to show cycling and I understand that NCR136 is shown on the Sustrans website. The cycle use may increase but I agree with the supporters that a very significant increase would need to arise before any likely conflict might arise.
 21. The OMA indicate that that NCR136 has been part of the NCN for several years² and there have been no reported accidents. It was claimed in objection that people would not know how to report such incidents and fairly agreed by the OMA that there may have been incidents of which they were unaware. It was said that an accident had been reported to the OMA the previous week but no details were forthcoming from either side.
 22. The risk assessment for NCR136 identified a 'low risk' and it was argued that only 'no risk' would be acceptable. I consider that the OMA are correct in their assessment that a 'low risk' is something we all accept as part of everyday life, whether crossing the road or walking down stairs. There was some indication of people taking evasive action when using NCR136 and I do understand that some may perceive a level of risk in relation to other users which is not reflected in either the local or national statistics of actual conflict. The OMA rightly indicate that the principle points of conflict are likely to be at the Park entrances but that reasonable users should generally be aware of one another. On the basis of all the evidence I am satisfied that the risks which may arise as a result of increased use of NCR136 if FP198 is stopped up are not such that they should override the other factors relevant to confirmation of this Order.
 23. Although there was some reference to the value of the historic route of FP198, the legislation allows such changes to be made where necessary, taking account of the circumstances of the case. It seems that the route now used as NCR136 has existed since at least 1990, with a tarmac path, following approximately the line of FP198, having been removed at around this time. There is no evidence of any legal change to the recorded public rights but the observed use shows the preferred route to be NCR136. I am satisfied that the indication in some aerial photographs of a route on the ground near the alignment of FP198 arises from the changes in the subsoil due to the former tarmac surface rather than indicating current use of this route.
 24. I note that FOUP believe people may have been discouraged from using FP198 by the closure of it for some time and the concrete now across the carpark entrance. However, I agree with the OMA that the route of NCR136 is preferable to FP198 due to it being surfaced, which will provide an improved access for school during wet weather. I also consider the provision of lighting on this route to be advantageous.
 25. There is an additional distance to be walked from point A to the Toucan crossing giving access to Champions Road, which appears to be a popular access to and from the Park. It is 1.5 metres overall, as identified by the

² The FOUP website post, dated 10 November 2012, refers to the provision of a cycle and pedestrian link and widening of the original path.

supporters, or 6.5 metres comparing the distance from point B to the Toucan with that from point C, as identified by FOUP. I do not consider any reasonable user would find such small increases in distance to be inconvenient.

26. A matter was raised regarding the potential safety aspects of removing an access to and from the Park, so that emergency services would be directed over NCR136 or the New Windmill Hall access, as would people needing to leave the Park in an emergency. This was also referred to in relation to expected increased use of the Park in conjunction with New Windmill Hall.
27. I understand that there are two emergency vehicle access points elsewhere in the Park. FP198 does not provide vehicular access any further than the edge of the former carpark due to ground-posts preventing such access. There are six other access points to and from each side of the Park including the remaining two access points from the north, off St Marys Lane. There has been no objection to the Order from any of the emergency services.
28. Whilst I recognise the disquiet of some people at the proposed changes, I am satisfied that the disadvantage or loss as a result of the diversion and closure of the footpath would be minimal.

The advantages conferred by the Order

29. In considering the overall effect of the Order I take account that confirmation would allow the development to go ahead. The supporters provided additional evidence supporting the need for such development in the country, in line with one of the core planning objectives of the National Planning Policy Framework, and specifically the need and desire in this area, as evidenced by expressions of interest. The development would include financial contributions towards infrastructure costs and to the Mayor's Community Infrastructure Levy. The planning report shows that the existence of FP198 across the site was taken into account as a material consideration during the planning process.
30. I am satisfied that the advantages in confirming the Order, and therefore allowing the development to proceed, outweigh the potential concerns to the loss of FP198 raised in objection.

Other matters

31. A number of matters were raised which were not relevant to my decision, several of them having already been determined through the planning process, or being relevant to that process, or other procedures, rather than this Order. These included whether a precedent for changes to open space would arise; whether other sites could deliver the development aims; whether, given the high level of requirement for such properties, it was worth proceeding for 22 units; other local planning decisions; whether the byelaws allowing cycling on the Park had or had not been properly advertised; whether the access near Brookdale Close is suitable for shared use; whether there would be a view to or from the Park once the development was complete; whether there was a requirement for parking in the area to support local businesses, provide access to the Park or assist during school run periods; whether the OMA had been entitled to use the area as a public carpark; concerns regarding signage on the route; and, whether the OMA acted lawfully with regard to the sale, or potential sale, of the land in question, including areas of green space.

32. I do, of course, understand that these issues are of particular importance and interest to those living locally and making use of the Park. However, I have been unable to give them weight in this matter.

Conclusion

33. 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 subject to the modifications previously proposed by the IOD, paragraph 23.

Formal Decision

34. In exercise of the powers transferred to me, the Order is confirmed subject to the modifications previously proposed:

- In part 2 of the Schedule to the Order:
 - after text "*Commencing at...*" add text "*...the existing footpath 198 at ...*";
 - after text "*...approximately 87 meters to...*" add text "*...a junction with St Mary's Lane at...*";
 - replace text "*1.8 meters*" with text "*2 metres or the width of the tarmac surface, whichever is greater, to a maximum of 2.95 metres.*"

Heidi Cruickshank

Inspector

APPEARANCES

For the Order Making Authority:

Mr N Westaway of Counsel, *instructed by* Mr D Fenwick *on behalf of* the
London Borough of Havering

who called:

Mr M Philpotts, Principle Engineer, London Borough of Havering
CEng, MICE,
FCIHT, FIHE,
PIEMA

In Support of the Order:

Mr S Morgan of Counsel, *instructed by* The Planning Bureau *on behalf of*
McCarthy & Stone Retirement Lifestyles Ltd

who called:

Dr A Burns, BSc,
MSc, PhD, CEng,
MICE, MIHT

Mrs K Rickards, Senior Planning Associate, The Planning Bureau Ltd
MRTPI

In Objection to the Order:

Mr W England

Mr B Flavell

Mrs P Flavell *on behalf of* Friends of Upminster Park

Mrs J Lee

Miss Lovelock

Mrs C Smith

INQUIRY DOCUMENTS

- 1 The Order
- 2 Statement of Common Ground
- 3 Inquiry Statement on behalf of the Order Making Authority
- 4 Definitive Map and Statement
- 5 London Borough of Havering, Byelaws for Pleasure Grounds, Public Walks and Open Spaces, confirmed 19 January 2015
- 6 Appearances for McCarthy & Stone Retirement Lifestyles Ltd
- 7 Closing Statement on behalf of McCarthy & Stone Retirement Lifestyles Ltd
- 8 Statement of Objection to Removal of Public Footpath 198

MAP NOT TO ORIGINAL SCALE

The Former Old Windmill Hall St Mary's Lane, Upminster, RM14 2QH
1987 Footpath Realignment April 2015

