

Penderfyniad ar y Gorchymyn

Ymchwiliad a gynhaliwyd ar 11/04/17
Ymweliad â safle a wnaed ar 11/04/17

gan Helen Slade MA FIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 07/11/17

Order Decision

Inquiry held on 11/04/17
Site visit made on 11/04/17

by Helen Slade MA FIPROW

an Inspector appointed by the Welsh Ministers

Date: 07/11/17

Order Ref: ROW/3157580M

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as The Vale of Glamorgan Council (Public Footpaths Nos 21 and 22 Wenvoe) Public Path Diversion Order 2016.
- The Vale of Glamorgan Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 8 April 2016 and proposes to divert the public rights of way shown on the Order Plan and described in the Order Schedule.
- In accordance with Paragraph 3(6) of Schedule 14 to the 1990 Act I have given notice of my proposal to confirm the Order subject to some modifications to the wording of the Order and the description of the route.
- One objection to my proposed modifications was received following the advertisement of my proposal.

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

Procedural Matters

1. This decision should be read in conjunction with my interim decision issued on 27 April 2017. In that decision I proposed to confirm the Order subject to the insertion of the name of the applicant into Paragraph 4 of the Order, and increasing the width of the route subject to the limitations presented by the presence of street furniture.
2. Mr A Kind has objected to my modifications only in respect of the inclusion of the reference to the limitations in the description of the path width. Mrs Gallimore has indicated that she supports Mr Kind's objection, but offers no further insight. The applicants have responded to the objection, and have expressed support for my modifications. There has been no objection to the fundamental objective of the Order.
3. The parties have agreed to this matter being dealt with by way of written representations.

The Main Issues

4. The only issue I need to consider is whether or not the Order should contain a reference to the limitations to the width of the route caused by the presence of street furniture.

Reasons

Specifications of the diverted route

5. The Order as made specified a width for the path of 1.5 metres. As set out in my interim decision, the Council (the Vale of Glamorgan Council) indicated at the inquiry that, at some point in the future, the path would be adopted as a footway to the carriageway and removed from the Definitive Map and Statement entirely. However in the meantime the diverted path would be included on the Definitive Map and Statement as a public footpath, as defined by Section 66 of the Wildlife and Countryside Act 1981.
6. At the inquiry, Mr Howells, the officer of the Council responsible for the adoption process, explained that the normal requirement for the adoption of a footway would be a minimum width of 2 metres, which might be less where localized narrowings occurred due to such street furniture as lighting columns. I acknowledge Mr Kind's view that the fact that the path will be adopted has no direct bearing on my decision, but it may be some time (perhaps years) before that adoption process is finalised. There is therefore an indeterminate period during which the path will be a footpath and not a footway. My duty is to ensure that the path is correctly described for that intervening period.
7. I am not aware that Mr Kind has visited the site, but I have had the benefit of seeing it. At the time of my site visits the proposed footpath route had largely been constructed and took the form of a footway together with the presence of streetlights. These have been, and will continue to be, erected by the developer (the landowner) and not by the Council. I fully expect that the entire route will have been constructed to the specification required for its eventual adoption long before that adoption takes place; and that the public will be using it to its full extent, subject to the existence of the street furniture erected by the developer. As I indicated in my interim decision, the estate is quite large and is completed to occupation for much of its extent, although not in relation to the actual footpaths which are the subject of this Order.
8. For the reasons I expressed in paragraph 58 of my interim decision, I maintain my view that it would make no sense to record on the Definitive Map and Statement a description of the public footpath which did not accord with the route available to the public and being used on the ground.
9. I acknowledge that the Regulations governing the drafting of Orders under Section 257 of the 1990 Act do not provide specifically for the describing of features identified as 'limitations'. I concluded in my interim decision that the Order I am considering has been prepared and drafted sufficiently in accordance with the Regulations so as to be a valid order. Mr Kind considers that it was not the intention of Parliament that street furniture on definitive map rights of way should be recorded in the definitive statement as limitations, but provides no authority for that statement.
10. I accept Mr Kind's view that I could simply have omitted any reference to the street furniture at all, but I must also have regard to the Equalities Act 2010 and the needs of less able people. Whilst street furniture might be expected on a 'footway', this may

not be the case on a path which is shown as a public footpath on a Definitive Map and Statement. Until such time as adoption takes place, this path will be recorded as a public footpath on the Definitive Map and Statement.

11. My modification does not require any additional part or schedule to the Order which is not prescribed in the legislation. It merely provides extra information in the description of the new routes to alert potential users to the presence of structures along the length of the public footpaths which may cause local narrowings, reducing the generalised width of 2 metres. Given the location of this path, it is highly likely to be used by parents with buggies, and perhaps other types of mobility aids allowed on public footpaths. It may also be used by people who are partially sighted or have general mobility problems. I therefore consider that the references to street furniture should remain in the Order to provide an accurate description of the path for all potential users.
12. However, I acknowledge that in terms of the management of public rights of way, the word 'limitations' is a term of art with particular connotations. In order to remove any ambiguity from my modification therefore I intend to amend the word 'limitations' to 'localised reductions'. This will not affect the meaning of the modification, but will remove any possibility of misinterpretation.

Conclusions

13. I have considered the duty to improve the economic, social, environmental and cultural well-being of Wales, in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015 ("the WBFG Act"). In reaching this decision, I have taken into account the ways of working set out at section 5 of the WBFG Act and I consider that this decision is in accordance with the sustainable development principle through its contribution towards one or more of the Welsh Ministers well-being objectives set out as required by section 8 of the WBFG Act.
14. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed subject to the modifications I formerly proposed, but with a slight alteration to the wording. This alteration will not result in the need to re-advertise the Order.

Formal Decision

15. I propose to confirm the Order subject to the following modifications:
 - In Article 5 of the Order insert in brackets after the words 'The Applicant' the words '*(Redrow Homes Ltd)*';
 - In Part 2 of the Schedule, in the descriptions of both Footpath 21 Wenvoe and Footpath 22 Wenvoe, in the columns headed 'Width' delete the figure '1.5' and insert the figure '2.0';
 - In the same columns, add the following words; '*subject to localised reductions due to street furniture*';

Helen Slade

Inspector
