
Order Decision

Site visit made on 2 October 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 11 December 2017

Order Ref: ROW/3170955

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Hertfordshire County Council (the OMA) (Ickleford 7a) Public Path Diversion Order.
- The Order is dated 4 December 2015 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Hertfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed

Procedural Matters

1. This case concerns the proposed diversion of that part of Public Footpath No. 7a (the footpath) that runs in an arc through the garden of Thatch Cottage. It is proposed to divert it along the southern boundary of the same property. A small section of the diverted route lies on land within the ownership of the adjacent caravan park.
2. The occupier of 'Wychwood' a neighbouring property, is opposing the Order on the grounds that, firstly, the footpath does not run on the alignment shown on the Order plan and, secondly, the occupier does not want the footpath moved closer to her garden fence. No-one requested an accompanied site visit, so my inspection of the route was carried out unaccompanied.

The Main Issues

3. The Order is made in the interests of the owner and occupier of the land crossed by the footpath. Section 119 of the Act requires that, before confirming the Order, I must be satisfied that:
 - (a) it is expedient, in the interests of the owner, that the footpath in question should be diverted;
 - (b) the new footpath will not be substantially less convenient to the public;
 - (c) it is expedient to confirm the Order having regard to its effect;
 - i) on the public enjoyment of the path as a whole; and
 - ii) the effect the coming into operation of the order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
4. Sub-section 2 sets out that a "...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to

another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.”

5. In addition, in determining whether or not to confirm the Order, I am required to have regard to the provisions of a rights of way improvement plan (“ROWIP”) prepared by any local highway authority whose area includes land over which an Order would create or extinguish a public right of way.

Reasons

Whether it is expedient, in the interests of the owner of the land, that the footpath in question should be diverted

6. The legal line of the footpath traverses the private garden of Thatch Cottage and therefore it is not unreasonable for the owners to want to divert it to increase privacy, security and enjoyment of their garden.
7. Having regard to the above and given that there is no evidence to the contrary, I am satisfied for the reasons given that it is expedient in the interests of the landowner that the footpath should be diverted.

Whether the new route will not be substantially less convenient to the public

8. At present the walked line of the footpath deviates slightly from the line shown on the Order plan. However, my determination must be made as if the legal line were currently available.
9. The diversion of the footpath would be fairly modest in its extent and its siting along the southern boundary of Thatch Cottage would be more coherent than the legal alignment. According to the OMA the proposed route would be some 25 metres less than the legal route. I also accept that the western termination point would be more convenient for walkers passing between Bridleway 4 and the rights of way network to the south of Snailswell Lane.
10. No additional gates or stiles would be erected. The unmade surface would be similar to the existing route and its width would be 2.5 metres¹. Accordingly, there would not be any significant disadvantage or loss to the general public as a result of the diversion. I therefore conclude that the new route would not be substantially less convenient to the public.

The effect of the diversion on public enjoyment of the route as a whole

11. I was able to walk both the existing and proposed routes as far as practically possible when I conducted my site visit. The proposed route could be said to have a more wooded and shaded aspect than the existing alignment. Nonetheless, given that most of the surrounding rights of way network is open in character such a change would not diminish one’s enjoyment of the route. It is also pertinent that users of the legal alignment would inevitably feel a sense of uneasiness about intruding into what is clearly a private space regardless of their legal rights. To that end, I am satisfied that the diversion would not adversely affect the public’s enjoyment of the route as a whole.

¹ The width of the current footpath is currently unrecorded.

The effect the coming into operation of the Order would have with respect to the land served by the existing route and the land over which the new route is created together with any land held with it, account being taken of the provisions as to compensation

12. The land crossed by the existing route would remain within the ownership of Thatch Cottage, with the land crossed by the proposed route being part of the same property, save for a small section within the ownership of Mr Lee who has raised no objection to the Order. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Compensation issues have not been raised.

Whether the point of termination of the new right of way will be on the same highway or highway connected with it, and will be substantially as convenient to the public

13. Point B would remain unaltered. Point A would be moved to point D which is approximately 35 metres to the south-east. Both existing and proposed eastern termination points intersect Ickleford footpath 7. Consequently, I am satisfied that this will be substantially as convenient to the public.

ROWIP

14. No issues have been raised by the parties in this regard, and there is nothing that would suggest the Order is incompatible with the OMA's ROWIP.

Other Matters

15. I have carefully considered Mrs Wallis' letter of objection. Most of the issues raised relate to unconnected matters which are not relevant to my consideration of this Order.
16. In terms of the effect of the diversion on the living conditions of Mrs Wallis' property I would make the following points. A temporary diversion of the footpath along the southern boundary of Thatch Cottage and close to the northern boundary of Wychwood has already been provided by the landowners. Despite that, there is no substantial evidence before me to suggest this has caused any disturbance or loss of privacy to the occupier of Wychwood. Moreover I noted that the landowner has planted a line of laurel bushes along the boundary. Once matured, this along with existing boundary treatments, would provide an effective screen between the garden of Wychwood and the footpath. Based on the foregoing, I am satisfied there would be no unacceptable loss of privacy or amenity to Mrs Wallis' property.

Conclusions

17. I have concluded above that the Order is expedient in the interests of the landowner. The proposed route will not be substantially less convenient, and I am satisfied that it is expedient to confirm the Order having regard to its effect both on public enjoyment and on the land. The change to the termination point would be substantially as convenient to the public. There is nothing in the submissions above or from my site visit that would lead me to conclude that it would not be expedient to confirm the Order.





Formal Decision

18. The Order is confirmed.

D. M. Young

Inspector

This Plan forms part of the Hertfordshire
County Council (Ickleford 7A) Public
Path Diversion Order 2015

-  Existing footpath
-  Existing bridleway
-  Footpath to be extinguished
-  Footpath to be created

0 5 10 20 30 40 50 metres

Scale 1:1250

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MAP NOT TO
ORIGINAL SCALE

