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## Order Decision

Site visit made on 20 September 2017

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

**Decision date: 28 November 2017**

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### **Order Ref: ROW/3168854**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Staffordshire County Council Public Path Diversion Order 2010, Public Footpath No. 24 Bobbington Parish.
- The Order is dated 1 March 2011 and proposes to divert that length of Public Footpath No.24 as shown on the Order plan and described in the Order Schedule.
- There were three objections outstanding when Staffordshire 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 with modifications as set out in the Formal Decision below.**

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### **Procedural Matters**

1. The Council requests modifications to the Order. As only part of FP No. 24 is affected this should be made clear in the title. Secondly, as no works are required to be carried out before the Order would come into force, Paragraph 4 is redundant. I agree and therefore the paragraph should be deleted. There would be no change to the length of path to be diverted as shown on the Order Map so I am able to make these modifications without advertisement.
  2. As no-one asked to be heard regarding the Order I made an unaccompanied site inspection, taking account of the written representations. Since the Order was made the Ramblers Association has withdrawn its objection to it.
  3. The existing footpath is obstructed by a hedge at the boundary of Westholme and by buildings at Halfpenny Green Vineyard. The line of the path crosses part of the vineyard and an adjacent field currently in crop production before meeting the hedge at Westholme, whence it cuts across its garden to exit at the highway on Point C on the Order Map. Although the path is not delineated its line can be seen and I could compare the existing and diversionary routes.
  4. In deciding whether an order under s118 of the 1980 Act should be confirmed, s118(6) requires that any temporary circumstances preventing or diminishing its use by the public shall be disregarded. It is generally accepted that a fair comparison between existing and proposed routes can only be made by also applying this principle to orders made under s119.
  5. Therefore in considering whether or not the diversionary path will be substantially less convenient to the public, I will disregard the obstructions and treat the existing path as available to its full legal extent and suitably maintained for those with rights to use it.
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## **The Main Issues**

6. Under s119 of the 1980 Act I must be satisfied of several matters before an Order is confirmed:
  - 1) Whether it is expedient in the interests of the owner of the land or of the public that the footpath in question should be diverted;
  - 2) Whether the diverted footpath will be not substantially less convenient to the public; and
  - 3) Whether it is expedient to confirm the Order. This may depend on a variety of relevant considerations but particular regard must be had to:
    - a. The effect the diversion would have on public enjoyment of the footpath as a whole;
    - b. The effect the coming into operation of the Order would have as respects other land served by the existing public rights of way; and
    - c. The effect any new public rights created by the Order would have as respects the land over which the rights are so created and any land held with it.
7. In addition a diversion must not alter the point of termination of a footpath: (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another highway connected with it, and which is substantially as convenient to the public. The route as diverted would end at a point on the highway, Point F on the Order Map, some 100m from the end of the existing FP No. 24. I consider this matter further below.
8. I must also have regard to any relevant provisions of a rights of way improvement plan for the area, however in these proceedings no such matters have been drawn to my attention.

## **Reasons**

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

9. The Order has been made because it appears to the Council that the diversion is expedient in the interests of the landowner. It would regularise a permissive path which has existed for many years as part of a farm conservation scheme.
10. In my view there are clear benefits to the owner of Westholme from the diversion of the footpath in terms of security to that property and privacy. There would also be benefits to the other owners, from an alternative route away from the buildings complex within the vineyard whilst avoiding a path through the middle of a cultivated field. I am therefore satisfied that the proposed diversion would be expedient in the interests of the land owner.

*Whether the diverted footpath will be not substantially less convenient to the public*

11. The proposed diversion route is some 20m longer than the existing route although the extra length is not seen as a substantial inconvenience. The main problem from the point of view of the remaining objectors is that the diverted route passes close to traffic on Tom Lane before emerging onto that highway at Point F, the new termination point, in what is considered to be in a dangerous

- place in the road. It is argued that a better alternative would be to continue the path through the field and then divert close to the boundary of Westholme ending at a point much closer to Point C, the original termination point.
12. However visibility at Point C is very poor. I saw that several safety mirrors had been placed opposite Westholme and the entrance to an adjoining property in order to overcome what is effectively a blind spot in the road due to its curvature. To open up the path at or near this location would not be at all satisfactory in my view.
  13. The stretch of Tom Lane from Points C to F and beyond to the vineyard entrance has no footway and a narrow banked verge. Users who exit the new path at Point F where there is a wide gap in the hedge, would be likely to travel towards Westholme/Halfpenny Green but would need to take care in either direction. That said, the visibility in both directions is reasonably good and far better than at Point C.
  14. I also note that the highway officer wrote a report when it was understood that Point F was located where there was a 60mph limit. That report preferred the use of Point F in place of Point C for safety reasons. In any event, despite some written evidence to the contrary, it appears that the derestricted speed signs were moved in 2016 so that the road at Point F, as I saw when I walked the route, is now subject to a 30 mph limit.
  15. I am satisfied overall that the proposed change to the end point of FP No. 24 would be substantially as convenient to the public due primarily to the adverse impacts on highway safety, were the existing path to be reopened at Point C.
  16. In assessing the relative convenience of the present and proposed routes I have taken into account that the existing path is away from the road but whilst part of the diversionary route would be closer to traffic it would be inside the field and behind a tall, dense hedge. One would proceed from the vineyard in a dog-leg route and I accept that a more direct line would be more convenient for some users.
  17. At the vineyard the path as diverted would follow the road down from the visitor centre before turning alongside the vines. Although this section is some 200m in length, the existing route, assuming it is unobstructed is confusing to negotiate through the complex where there are several independent outlets. I consider that it would not be substantially less convenient to walk instead the established main path through centre before striking out to open land.
  18. Taking these factors into account and that the surface conditions and slopes of the paths, existing and proposed are broadly similar, and bearing in mind the limitations in the role that the path plays in the local network, I am satisfied that the diverted footpath would be not substantially less convenient to the public.
  19. As to the particular test to be applied regarding the termination point of the diverted footpath, I consider also that it will be not substantially less convenient to the public for the reasons given in paragraphs 11 to 15 above.

*Whether it is expedient to confirm the Order: (a) effect the diversion would have on public enjoyment of the footpath as a whole*

20. The existing footpath passes through garden and tarmac areas belonging to the residential property of Westholme. Using this route may detract from many people's enjoyment of the way, due to a feeling of intrusion. The path also crosses the grounds of the vineyard where there are several disparate buildings, in contrast to the proposed route which provides a clear way through the visitor centre. The proposed diversion has been made available for several years and the existing path is not connected at the Westholme end to any other footpath. Its role in the overall public rights of way network is thus limited. The original character of the legal route will be diminished to an extent because of the proximity of the new route, in part, to the main road. However views would still be obtainable of the tree-lined horizon to the north and although one may not be traversing fields of wheat, a walk by the vines as well as around the field would seem to me to provide no less a pleasurable recreational route for many users.

21. Overall, and balancing the above factors I conclude that the public enjoyment of the path as a whole would not be significantly affected by the diversion.

*Whether it is expedient to confirm the Order: (b) and (c) effect on adjoining land*

22. The owners of the land affected by the proposal clearly support the Order. If it were confirmed there would be no adverse effects on other land served by the existing public rights of way, or on land over which the new rights of way would be created, and any land held with it.

*Balancing exercise: whether it is expedient overall to confirm the Order*

23. In reaching a final conclusion on the expediency of this diversion I must weigh the advantages that would accrue to the landowner in whose interest the Order is made against any disadvantages that may result for the public.

24. The proposed diversion would be in the interests of the land owner. I accept that the proposed route is slightly longer, less direct and comes closer to a busy road. I do not regard these inconveniences as substantial when set against the serious safety implications that reopening the route at Point C would have for all highway users. Terminating the new route at Point F, whilst some distance from Westholme would be justified as substantially as convenient due to the improved visibility for pedestrians and road users at this point. In addition the new route would not adversely affect the public enjoyment of the footpath as a whole, or the interests of owners of land served by the existing path, or land over which the new rights of way would be created. I also note the support for the proposal from South Staffordshire Council and Bobbington Parish Council.

25. In practice, it is accepted that most users are likely to walk westwards from Point F, using the road for some additional 100m to reach Point C at Westholme where the original path ends. Although many walkers will be passing Westholme in any event, the diversion does not, as has been suggested necessarily cause or require the public to walk in that direction.

26. The additional length of Tom Lane that would need to be negotiated from Point F to Point C is a relevant factor, but in my opinion it is not of such weight that

it should displace the need for the designated new route itself to provide a safe exit point.

27. Therefore taking into account all relevant factors and having addressed the statutory tests in s119 of the 1980 Act, it is expedient to confirm the diversion Order subject to modifications.

### **Conclusion**

28. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision below.

### **Formal decision**

29. I confirm the Order subject to the following modifications:

- i. In the title of the Order insert “(part)” after “No. 24”
- ii. In the Order delete the following: “4. The diversion of the footpath shall have effect on the date which Staffordshire County Council certify that the terms of Part II of the Schedule have been complied with.”

*Grahame Kean*

INSPECTOR

