



Order Decision

On papers on file

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 01 August 2017

Order Ref: FPS/C1245/4/19

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as the Dorset County Council (Part of Footpath 60, Thorncombe at Westford Mill) Public Path Diversion Order 2009.
- The Order is dated 11 January 2010 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981 Act, once the provisions relating to the diversion come into force.
- There were 2 objections outstanding when Dorset 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 subject to the modifications set out below in the Formal Decision.

Procedural Matters

1. Two objections were made to this Order within the Statutory Period. A further objection was received outside the Statutory Period. All of the objections relate to the references to stepping stones in Part 2 of the Schedule which were intended to be used as a crossing point between points B and C. However, the Order Making Authority (OMA) has stated in its written evidence that, due to further erosion of the riverbank, such a means of crossing is no longer considered appropriate. Furthermore, it has confirmed that, in the event that the Order was confirmed, it would seek funding to install a footbridge as an alternative means of crossing. As a result, the objectors have agreed to withdraw their objections, subject to the replacement of the words 'stepping stones' in Part 2 of the Schedule with the words 'a footbridge'. In the event that the Order was to be confirmed, I am satisfied that such an amendment can be addressed by modifying the Order in the manner suggested.
2. My attention has also been drawn to the wording in the Order which refers to it being made under section 53A(2) of the Wildlife and Countryside Act 1981. However, the Order does not comply with the form of Order prescribed in the Public Rights of Way (Combined Orders) (England) (Amendment) Regulations 2010 ("the 2010 Regulations"). The OMA has been notified of this and has indicated in its written evidence that the main purpose of the Order is to divert part of Footpath 60. In view of the practical difficulties involved in seeking to modify the Order to bring it within the form of order prescribed by the 2010 Regulations, it appears to me that the appropriate course of action is to consider it on the basis that it is made solely under section 119 of the 1980 Act. Accordingly, should it be confirmed, it will be necessary to modify the Order by removing the second paragraph of the preamble in its entirety as well

as removing the references to amending the Definitive Map and Statement contained in the first paragraph of the preamble and in Paragraphs 1 & 2 of the Order.

3. I note that the Order Plan contains some typographical errors in the spelling of the word 'proposed'. Although these do not result in any particular ambiguity or affect the meaning of the Order, were the Order to be confirmed, I am satisfied that the Plan can be suitably modified to correct these errors.
4. I have not made a site visit and am confident that I can make a decision without the need to do so.

The Main Issues

5. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied that it is expedient in the interests of the landowner that the footpath in question should be diverted. The other tests for confirmation set out in s119 which are relevant to this Order are, firstly, whether the diverted footpath would be substantially less convenient to the public than the present one, and secondly, what effect the proposed diversion would have on public enjoyment of the path as a whole.
6. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council. However, in this case no material provisions of the Rights of Way Improvement Plan have been identified by the OMA.

Reasons

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

7. The current path commences to the south of Westford Mill and proceeds north towards the former mill. Here it skirts around the dilapidated mill buildings after which it crosses a mill race before proceeding north across a second mill race before continuing generally north north east over a footbridge over the River Axe. It then proceeds across a weir to the County boundary, where it joins with Footpath 65 in the Parish of Tatworth and Forton in South Somerset.
8. There are no objections to the proposal and the information provided by the OMA indicates that it would be in the interests of the landowner to move the path away from the dilapidated Mill buildings and nearby pony paddocks. This would clearly enable him to make more effective use of the land and reduce the risk of injury to members of the public. As such, I am satisfied that it is expedient in the interest of the landowner that the footpath be diverted.

Whether the diverted path would be substantially less convenient to the public

9. The existing route is approximately 347m long compared to the diverted path which would be around 388m long. This would amount to around an additional 41 metres which represents an increase of around 11%, which, while longer would not be substantially so.
10. Accordingly, I conclude that the proposed diversion would, due to its increased length and alternative alignment, be slightly less convenient than the current path but would not be substantially so.

The effect on public enjoyment

11. The route has been unavailable for public use for a number of years due to the risks posed by the dilapidated buildings. It is currently inaccessible and the Council has informed me that it is currently the subject of a Temporary Traffic Regulation Order which has temporarily closed the route.
12. The proposed diversion would move the path away from the dilapidated buildings and provide a new route along the riverbank. It would increase views of the river and also help ensure that, subject to a suitable crossing point between points B and C, the route can be reopened to the public. It appears to me that, overall, the public's enjoyment of the route will be improved and in view of the risks posed along the present route, it is more likely that the diverted route will be opened to the public than would be the case were its current alignment to remain unaltered.
13. Consequently, I find that there would be a positive impact on the public enjoyment of the route and have seen nothing that would lead me to conclude that the Order is not expedient in this regard. Accordingly, I consider that the test is met.

Conclusion

14. Having regard to these and all other matters raised within the written representations and the papers on file, I conclude that the Order should be confirmed subject to the modifications set out in the formal decision below. I am satisfied that such amendments would not require re-advertising by virtue of Paragraph 2(3) of Schedule 6 to the 1980 Act.

Formal Decision

15. The Order is confirmed subject to the following modifications:
 - In Paragraph 1 of the Preamble, the words "and thereupon the Dorset County Council Definitive Map and Statement shall be modified accordingly" shall be removed.
 - Paragraph 2 of the preamble which refers to Section 53A(2) of the Wildlife and Countryside Act 1981 shall be removed in its entirety.
 - In Paragraphs 1 & 2 of the Order, the words "and thereupon the Dorset County Council Definitive Map and Statement shall be modified accordingly" shall be removed.
 - In Part 2 of the Schedule the words 'stepping stones' shall be removed and replaced with the words 'a footbridge'.
 - The words "Proposed" in the Order Plan key and "Proposed" in the Order Plan title shall be removed and replaced with the word "Proposed".

Rory Cridland

INSPECTOR

