



Order Decision

Site visit made on 5 February 2018

by K R Seward Solicitor

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

Decision date: 06 March 2018

Order Ref: ROW/3180969

- This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Great Yarmouth Borough Council (Footpath No.7, Great Yarmouth) Public Path Diversion Order 2017.
- The Order is dated 18 May 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection outstanding when Great Yarmouth Borough 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. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the written representations.
2. There is one statutory objector, being The Open Spaces Society ("OSS"). Whether or not the OSS declined to attend a site meeting with the applicant to discuss the proposed diversion has no bearing on my decision.

The Main Issues

3. For the Order to be confirmed, by section 257 of the 1990 Act I must be satisfied that it is necessary to divert the footpath in order to enable development to be carried out in accordance with planning permission granted under Part III of the 1990 Act. This is subject to the development not being substantially complete.
4. In addition to the statutory test set out above, paragraph 7.15 of the Rights of Way Circular 1/09¹ advises that the grant of planning permission does not mean that a public right of way will automatically be diverted or stopped up. However, an authority must have good reasons to justify a decision either not to make or not to confirm an order.
5. The disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near the existing highways should be weighed against the advantages of the Order.

¹ Published by the Department for Environment, Food and Rural Affairs

Reasons

Whether it is necessary to divert part of the footpath to enable development to be carried out

6. The application is made by MDF (Great Yarmouth) Limited being the landowner of the land affected by both the existing footpath (FP7) and the proposed diverted route.
7. FP7 currently crosses the former car park of a disused warehouse and store. The site was derelict and planning permission was granted on 4 February 2016² for its redevelopment. The development comprises the erection of a HGV servicing and repair depot with ancillary offices, MOT testing facility and stand-alone wash bay. The development did not appear to have commenced at the time of my visit.
8. FP7 runs along the eastern boundary of the development site, but as it heads north, the path abruptly changes direction into the site. It proceeds west for about 21 metres before changing direction again to a northerly direction to exit the site after about 44m. It is this part of FP7 which juts into the site and described by the Order Making Authority (OMA) as a 'dogleg' that is proposed for diversion.
9. Instead of changing direction, the diverted route would continue in a straight line along the eastern boundary of the development site.
10. In the north-east corner of the site where the existing path is located there is due to be a vehicle wash bay and area for HGV's to manoeuvre. The proposed site layout plan shows the wash bay built directly over the footpath. As the grant of planning permission does not entitle developers to obstruct a public right of way, the development could not proceed unless the route is altered.
11. I consider that it is necessary to divert the section of FP7 to enable the development to be carried out.

The disadvantages or loss likely to arise as a result of the diversion

12. The OSS objects on the basis that the diverted route will be 2m wide which is the bare minimum sought in Norfolk's Rights of Way Improvement Plan 2007-2017 (ROWIP) for unenclosed footpaths. The diverted path is shown as enclosed at least on one side where it runs alongside the proposed development and both sides could be enclosed in future. For enclosed footpaths the ROWIP seeks a minimum width of 3m.
13. The OMA submits that as the rest of the route is bounded by fencing and/or industrial buildings, the look and feel will be no different.
14. The OSS considers there to be no reason why the diverted path should not be 3m wide. To achieve that width, it would necessitate the acquisition of the adjoining strip of land which is currently undeveloped. The applicant maintains that the redevelopment of the employment site would become unviable if a 3m width was required.
15. There are no details of any attempts made to acquire the adjacent strip of land

² Pursuant to planning ref: 06/15/0738/F

to demonstrate that it could not be secured or that it would make the development unviable. To require such evidence would in my view be excessive particularly as the diversion is wider than the existing path. When the Definitive Map and Statement was modified by Order dated 28 December 2005, FP7 was described as being approximately 6ft in width i.e. 1.8m or thereabouts. In reality the OMA measures the path at varying widths between 1.2 to 1.5m. Those figures are not contested. At the proposed increased width, the path would be sufficient for its intended purpose and no narrower than the footpath network in the vicinity. Moreover, the ROWIP provides a guide rather than imposing a requirement.

16. In the circumstances, I do not consider that the width of the diverted path would cause any disadvantage or loss.

The advantages to be conferred by the proposed Order

17. The OMA submits that diverting this footpath will allow the redevelopment of a brownfield site in an area zoned for employment, creating much needed jobs in the town. I have no cause to dispute that assertion.
18. The diversion would provide a shorter route without a change in direction. The path would be wider than before and provide a continuation of FP7 on a straight alignment.
19. The new path is to be constructed to the County Council's standards which the OMA considers to be a vast improvement on the existing unsurfaced route. I saw on my site visit how the existing route is an undefined, uneven and overgrown surface. At the time of my visit it was also boggy in places. These factors could be unappealing to users.
20. In the circumstances, the proposed diversion can only improve the usability of the path to the benefit of the public whilst also regenerating a derelict site and bringing employment opportunities.

Other Matters

21. If confirmed, the OSS would prefer that the words "Limitations and conditions: None" are added to Part 2 of the Order Schedule for clarity. There are no conditions or limitations and this is clear without it being expressly stated. The suggested additional wording is superfluous.

Conclusion

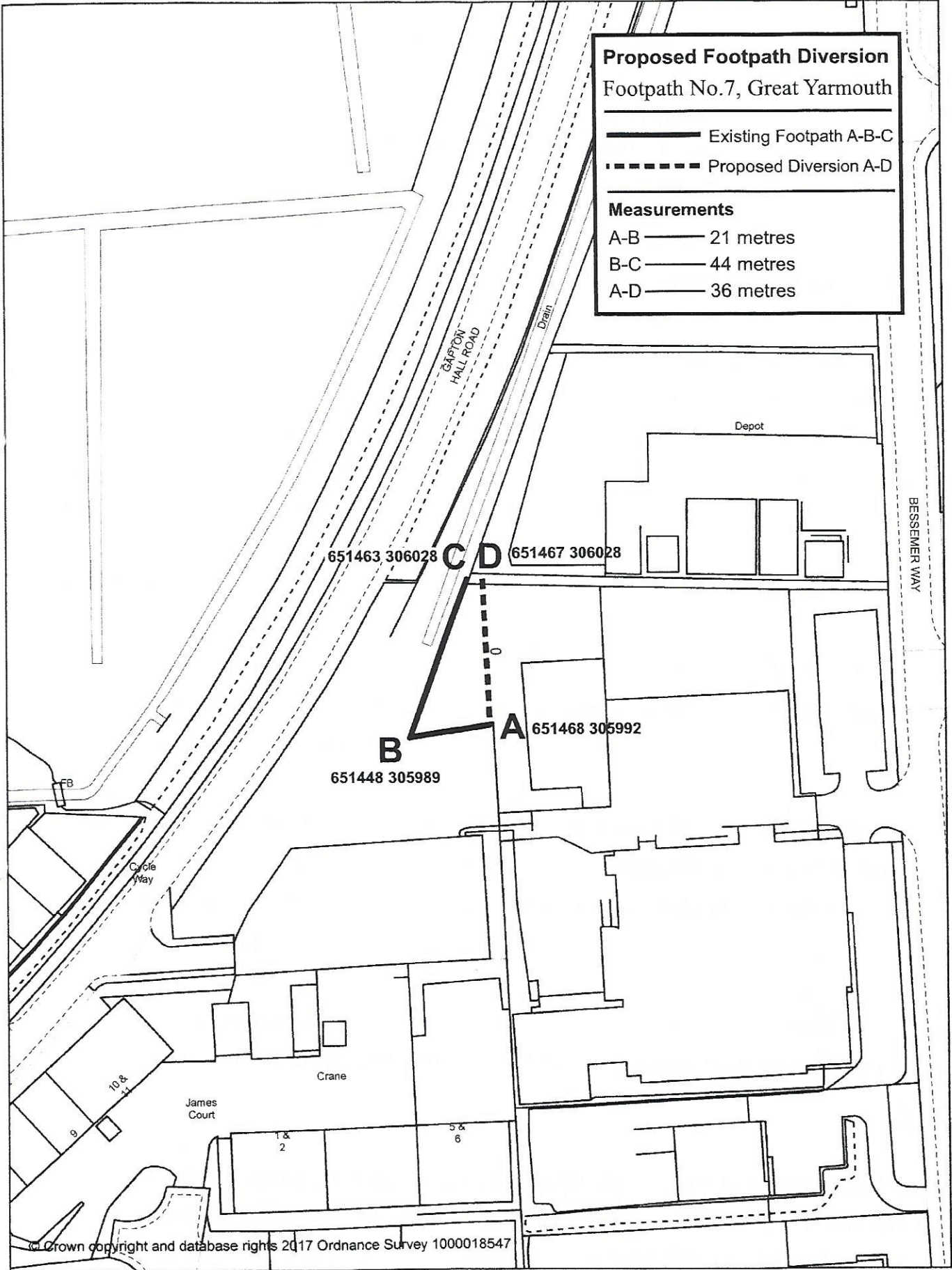
22. Having regard to all of the matters raised in the written representations, I conclude that the diversion of the footpath is necessary to enable development to be carried out. The advantages of the diversion outweigh any perceived disadvantage of the footpath being 2m rather than 3m in width. I conclude that the Order should be confirmed.

Formal Decision

23. I confirm the Order.

KR Seward

INSPECTOR



Proposed Footpath Diversion
 Footpath No.7, Great Yarmouth

— Existing Footpath A-B-C
 - - - Proposed Diversion A-D

Measurements

A-B — 21 metres
 B-C — 44 metres
 A-D — 36 metres

651463 306028 **C** **D** 651467 306028

B 651448 305989

A 651468 305992

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