



Order Decision

Site visit made on 22 May 2018

by **Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

Decision date: 19 July 2018

Order Ref: ROW/3184898

- This Order is made under Section 257 of the Town and Country Planning Act 1990 ('the 1990 Act') and is known as the East Staffordshire Borough Council (Footpath No. 26, Land at Oakfields, Hanbury, in the Parish of Hanbury) Public Footpath Diversion Order 2017.
- The Order is dated 24 April 2017 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were four number objections outstanding when East Staffordshire 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 subject to the modification set out in the Formal Decision.

Procedural Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking into account the written representations, including the four objections. In submitting the Order to the Planning Inspectorate, the Council had indicated that it was adopting a supporting stance.
2. The existing route has been stoned, presumably by the developer who has undertaken site preparation works in advance of building four dwellings on the land. In addition, the line of the alternative route that is proposed has also been hardsurfaced with chippings. This proved useful to my site inspection as I was able to walk and compare both existing and proposed routes.

The Main Issues

3. The Order states that it was made because the East Staffordshire Borough Council was satisfied that it was necessary that the footpath be diverted in order to allow development, for which it had granted planning permission under Part III of the 1990 Act to be carried out. The merits of the development that has been permitted are not at issue. I shall consider whether it is necessary to divert the footpath to enable development to be carried out.
4. As development had commenced before the date of my site visit I must also be satisfied that it has not been substantially completed, since if it has, the powers of the 1990 would no longer be available to me to confirm the Order.
5. Even if necessary to divert the path to allow implementation of the permission, my confirmation of the Order is discretionary. I shall consider the merits and

de-merits of the proposed stopping up in relation to the particular facts of the case.

Reasons

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

6. The planning consent referred to in the Order relates to an outline planning permission Ref. No. P/2014/00291 allowed on appeal following the Council's original refusal of planning permission (Planning Inspectorate Ref. No. APP/B3410/A/14/2224302) and its associated Reserved Matters Approval Ref. No. P2016/00291 for the erection of four dwellings. The merits of the development are not at issue.
7. I am satisfied that the planning permission directly relates to the land crossed by the Order route. I have seen copies of the appeal Inspector's decision letter that granted outline planning permission, the Reserved Matters approval decision notice together with the approved housing layout plan. These show that the matter of the rights of way was properly considered under the Act and that the permitted development would not be possible unless the footpath was diverted. The plans show that the current footpath route would pass through the buildings of the four housing plots. For this reason, I am satisfied that it is necessary to divert the footpath to enable the development to be implemented.

Whether the development is substantially complete

8. Although the site has been cleared with some site preparatory works undertaken, there has not been any material start of the construction of the dwellings themselves.
9. Guidance in DEFRA ¹ Circular 1/09 at paragraph 7.1 explains that where a development is completed before the Order has been made or confirmed, the powers under section 257 of the 1990 Act are no longer available. However this is clearly not the case here and there is significant work that remains in order to implement the planning permission, most importantly along the route of the present alignment of public footpath No. 26.
10. I am therefore satisfied that the approved development has not been substantially completed and thus the powers under section 257 of the Act are extant and remain available.

The merits and de-merits of the proposed diversion

11. The existing footpath runs diagonally across the field the subject of the planning permission from a point at a stile in the south-east corner of the field that links the footpath with Hanbury Hill opposite the Cock Inn PH to the east and another stile in the north-west corner of the permitted housing site that proceeds to Martins Lane in the direction of the village church of St Werburgh.
12. The proposed diversion also starts at the stile in the south-east corner of the field and skirts the southern boundary of the field along the side boundaries of No's. 4 and 9 Oakfields until reaching the south-western corner of the field. It then turns north until it reaches the stile in the north-western corner of the field.

¹ Department for Environment Food and Rural Affairs

13. In addition to the statutory test set out above in relation whether the approved development has been substantially completed, I am obliged to weigh any 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 against the advantages of the Order.
14. The footpath links two stiles either end of the field. In diverting the footpath along the southern and western boundaries, the points of arrival and departure onto and from this section of footpath will not change. It will however be very marginally increased in length. The additional distance for users between the south-east and north-west corners of the field will be slight. I am satisfied that the Order will not have a detrimental effect upon those whose rights may be affected in this way.
15. The Order sets out that the footpath will be 1.8 metres wide. Whilst objectors have commented that the present alignment through an open field does not have any specified width suggesting that walkers have historically wandered across the open field, I am satisfied that the specified width of 1.8 metres is acceptable and the Order will not have a detrimental effect upon those whose rights may be affected.

Other matters

16. It is submitted that the routing of the diversion along the southern and western field edges would result in the diminution in the enjoyment of the fine views that presently exists across a wide expanse of countryside to the north. In addition, objectors have raised the question of maintenance of trees and hedgerows that might overhang and further reduce the width of the path at some future point.
17. Whilst an illustrative plan accompanied the outline planning application, which depicted a possible route of the diverted path running along the eastern and northern boundaries of the site, the Council confirms that this plan was treated as illustrating how the footpath could be diverted in the event that planning permission was forthcoming and did not form part of the approved plans. The subsequent approval of Reserved Matters depicted the proposed route.
18. It seems to me that the matters raised above relate to the merits of the development that has the benefit of planning permission. Whilst I recognise the views expressed in terms of the pleasant views that exist in a northerly direction, these matters fall outside what I am required to have regard to. Accordingly, I have not given any further consideration to these matters, as they are not issues that are relevant to my decision on the Order made under Section 257 of the Act.

Conclusions

19. It is necessary to divert the footpath in order to enable consented development to be carried out, and I conclude that the diversion would not result in disadvantages or loss, either to members of the public generally, or to persons whose properties adjoin or are near the existing highway, that are sufficient to outweigh the advantages of the Order.
20. To avoid uncertainty regarding the position, area, maintenance and obstruction of the footpath, the Order will need to be amended so that reference to a *minimum* width is avoided.

21. Accordingly, having regard to the above reasons and to all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the minor modification in relation to the precise width of the proposed route.

Formal decision

22. I confirm the Order subject to the following modification:

- In the Part 2 of the Schedule delete "The new route will be a minimum width of 1.8 metres" and replace by "The new route will be 1.8 metres wide".

Gareth W Thomas

INSPECTOR

Proposed Diversion of Public Footpath No 26
Land at Oakfields Hanbury Staffordshire

135.8m

Existing Unmarked Right of Way

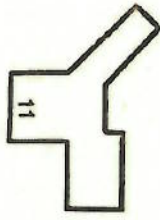
Proposed Footpath Diversion

MAP NOT TO ORIGINAL SCALE



160.80

Hanbury



Ponds

Hill House

Path (um)

Fairview

HANBURY HILL

Water Tower

The Bungalow

OAKFIELDS

PO

Rock House

Track

LB

The Chestnuts

TCB

EJ Sub Sta

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