
Order Decision

Site visit made on 12 July 2018

by K R Seward Solicitor

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

Decision date: 02 August 2018

Order Ref: ROW/3185316

- 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 Dorset County Council (Part of Footpath10, Spetisbury) Public Path Diversion Order 2017.
- The Order is dated 13 January 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 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.

Preliminary Matters

1. The application was made by Simon Lauder who was a joint owner of the property known as 'Camelot' at the time of the application. Mr Lauder is no longer the landowner, but the new landowners support the application and have appointed him to make representations on their behalf.
2. None of the parties requested an inquiry or hearing into the Order and so I made an unaccompanied site inspection. In arriving at my decision I have taken into account all of the written representations and documentation.
3. Upon confirmation, the definitive map and statement will also be modified.

Main Issues

4. The Order has been made in the interests of the owners whose land is crossed by Footpath 10 (FP10). By virtue of section 119 of the Highways Act 1980, for me to confirm the Order I must be satisfied that:-
 - (a) the diversion to be effected by the Order is expedient in those interests;
 - (b) the new path will not be substantially less convenient to the public in consequence of the diversion;
 - (c) any new termination point for the paths is substantially as convenient to the public; and
 - (d) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the paths as a whole, and
 - (ii) the effect the coming into operation of the Order would have with

respect to other land served by the existing paths and the land over which the new path would be created together with any land held with it.

5. I shall also have regard to any material provision contained in a rights of way improvement plan ("ROWIP") for the area when considering the Order.

Reasons

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

6. The County Council as the Order Making Authority indicates that the footpath was diverted onto the existing route in 1986, but the definitive line was not what was intended. The application is said to seek correction of that mistake.
7. 'Camelot' is an irregular shaped plot. Part of the garden is located behind the neighbouring dwelling known as 'Priory View'. The footpath is within the garden of 'Camelot'. It extends beside the shared boundary with 'Priory View' before changing direction to cut across a central part of Camelot's garden. The path changes direction again to proceed behind the rear garden fence of 'Camelot' in a north-westerly direction.
8. The Order aims to divert the section of FP10 which runs through the enclosed garden of 'Camelot'.
9. It is unclear whether there is any basis for the landowners' concerns over security due to the location of the public footpath. Nevertheless, interference with privacy will invariably ensue from people walking through part of the domestic garden. This will impact upon the occupiers' enjoyment of their garden in consequence. Therefore, I am satisfied that it is in the interests of the landowners for that part of FP10 to be diverted.

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

10. The proposal is to divert FP10 around the perimeter of the garden of 'Camelot'. Instead of being next to the boundary with 'Priory View', the footpath would run beside the common boundary with 'Little Oaks' as shown on the Land Registry title plans. It would wrap around the corner of the garden of 'Camelot' to meet the unaffected part of FP10 and continue in a straight line all the way along its rear boundary.
11. There are no limitations for the new route whereas the existing route has a gate at both points A and C.
12. The termination points would be unchanged. The diverted route is only 2m (or thereabouts) longer than the recorded route, having negligible impact on convenience. Consequently, the new path will not be substantially less convenient to the public.

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

13. The new route is already in use. I gather that the public has used a path along this alignment for some years. However, there is no evidence before me that there is a claim this is an existing public right of way.

14. Post and rail fencing has been erected between A-D-C to separate the diverted path from the garden of 'Camelot'. The diversion follows a clearly defined line which is easy to navigate. In contrast, the existing route goes through a part of the garden along an unmarked line on the ground making it difficult to follow between B-C. In particular, it is not readily apparent where the existing route changes direction at point B when approaching from point A. This is liable to cause confusion for walkers with risk of people straying off the defined route.
15. Some users may feel uncomfortable walking through a domestic garden especially if uncertain of its alignment. The much clearer route offered by the diversion is certainly preferable in terms of ease of use. Not only is the alignment unmistakable, it also benefits from continuing straight ahead between C-D to follow the line of the mature hedgerow planted on the western side of the path. This provides a more natural continuation of the path with clear sightlines of the way ahead. The garden has some trees and foliage, but it does not offer any views of note or value. Similar views of the surroundings can be seen from the new route.
16. The new route is no less enjoyable than the existing route and indeed provides a better experience for walkers by offering a clear alignment around the perimeter of the garden.

The effect of the diversion on other land served by the existing path and the land over which the new path would be created

17. I must consider the effect the diversion would have as respects the land over which the new path would be created together with any land held with it.
18. There is one statutory objector, Mr Eric Bubb, whose property at 'Little Oaks' shares a boundary with 'Camelot'. Mr Bubb claims to be the owner of the land onto which part of FP10 would be diverted if the Order is confirmed. He objects to the Order on that basis.
19. Mr Bubb has produced various historical documents including Conveyances and previous Public Path Diversion Orders for FP10. The land registered at H.M. Land Registry shows the general boundaries. Mr Bubb believes the boundaries are wrong because they are based on Ordnance Survey mapping. He has produced copies of handwritten letters sent to the Land Registry since 2014 disputing the boundaries. However, there is no formal record to indicate that the boundaries are subject to challenge. It is not within my remit to resolve land title disputes.
20. The land onto which FP10 would be diverted is shown on the Land Registry title plan¹ as being within the registered title of 'Camelot'. The diverted path would be 2m in width running parallel with the shared boundary with 'Little Oaks'. When comparing the proposed alignment marked on the Order Map with the title plan, no part of the route is shown as infringing the boundary line for 'Little Oaks'. For the purposes of this Decision, I am satisfied that the proposal to divert FP10 would be onto land shown to be within the official registered title for 'Camelot'. The landowners of 'Camelot' support the application.

¹ As at 4 December 2017

Rights of Way Improvement Plan

21. No-one has suggested that the Order is contrary to any material provision contained in a Rights of Way Improvement Plan.

Whether it is expedient to confirm the Order

22. I have concluded above that the Order is expedient in the interests of the landowners. The proposed route will not be substantially less convenient and I am satisfied that it is expedient for the Order be confirmed having regard to its effect on public enjoyment. Nothing in the submissions or from my site visit leads me to conclude that it would not be expedient to confirm the Order.

Conclusions

23. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

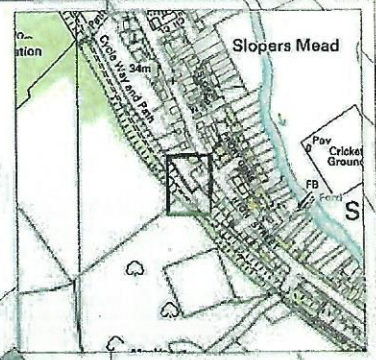
24. I confirm the Order.

KR Seward

INSPECTOR

SPETISBURY PARISH

CAMELOT



PRIORY VIEW

CASTLE VIEW

LITTLE OAKS

Eric Evans



FP10

NORTH DORSET TRAILWAY

FP28

FP 10

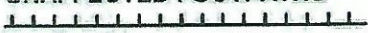
FP 9

102400

102400

391200

KEY

UNAFFECTED FOOTPATHS


PART OF FP10 TO BE DIVERTED
A **B** **C**


PROPOSED NEW ROUTE OF FP10
A **D** **C**

GRID REFERENCES:
A - ST 91190241
B - ST 91170243
C - ST 91160242
D - ST 91170240

DORSET COUNTY COUNCIL (PART OF FOOTPATH 10, SPETISBURY) PUBLIC PATH DIVERSION ORDER 2017

Ref: 16/03/1
Date: 04/02/2016
Scale 1:350
Drawn By: CAM
Cent X: 391179
Cent Y: 102415

GEOGRAPHICAL INFORMATION SYSTEMS



Dorset County Council

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