
Order Decision

Site visit made on 7 August 2018

by Joanne Burston BSc MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 September 2018

Order Ref: ROW / 3194381

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as Vale of White Horse District Council, Public footpath, Shrivenham No 6 (Galleyherns Farm) Public Path Diversion Order 2017.
- The Order is dated 22 February 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 Vale of the White Horse District 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. The parties to the case have agreed that the matter be dealt with by way of the written representation procedure. Accordingly, I made an unaccompanied site visit to the area on Tuesday 7 August 2018.

Main Issues

2. The Order has been made in the interests of the landowner. Section 119 of the 1980 Act requires that before confirming the Order, I must first be satisfied it is expedient in the interests of the landowner that the footpath in question should be diverted, and that the new footpath will not be substantially less convenient to the public.
3. I must also consider whether the proposed diversion satisfies the test set out in Section 119(2) which states that a diversion order must not alter the point of termination of a path otherwise than to point on the same highway, or a highway connected to it, and which is substantially as convenient to the public.
4. I shall then consider whether it is expedient to confirm the Order firstly having regard to the effect which the diversion would have on public enjoyment of the path as a whole, and then its effect on the land affected by the Order route. I must also have regard to the provisions for compensation.
5. In addition, I am required to take into consideration any material provisions of a rights of way improvement plan prepared by the Council.

Reasons

Background

6. The existing footpath runs in part through an active farmyard. In 2015 the Vale of the White Horse Council approved a planning application¹ for 2 large agricultural buildings, propane gas storage tanks and other associated works. This planning permission impacted on the alignment of the footpath where it travels through the farmyard at Galleyherns Farm. Initially the Order Making Authority (OMA) sought to make an Order via Section 257 of the Town and Country Planning Act 1990. An objection was made to this Order which amongst other matters stated that the development was substantially complete. Accordingly the Order could not be confirmed.
7. A subsequent Order was then made, under the 1980 Act, which is now before me. One objection was duly made by a local representative of the Open Spaces Society.
8. The section of footpath to be diverted commences at the corner of an arable field (Point A on the Order Map) and travels broadly east across this field until it reaches the farmyard (Point B on the Order Map). The footpath then travels through the yard over a concrete surface, broadly north east. At Point 'C' the footpath turns east across the yard and at Point 'D' the path enters a further arable field. This section of footpath is approximately 457 metres in length.
9. The proposed diversion commences at Point 'A' and crosses the same arable field as the existing footpath, but in a north easterly direction. At Point 'E' the path crosses a drainage ditch into the adjoining field, where it travels south east to re-join the existing footpath at Point 'D'. The proposed diversion is approximately 500 metres in length.

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

10. The Order is made in the interests of the landowner to address safety issues associated with the operations at Galleyherns Farm. As I saw on my site visit the yard was very busy with a number of tractor and trailer movements coming into and out of the yard. There were also various loaders and other vehicles working in the yard moving machinery and stock between various bays.
11. The proposed diversion would take the footpath away from the working farmyard and propane gas tanks and thus avoid conflict with farm vehicles / machinery. In this regard I note the landowner's comments that "*These represent in excess of 500 lorry movements per annum and 750 tractor and trailer movements. In addition to this our equipment such as sprayers, harvesters and our personnel are coming and going on a daily basis. The grain storage sheds are serviced by telehandlers which both load and unload the sheds and fill the lorries. These handlers drive in and out of the sheds without warning and can represent a significant danger for pedestrians.*"
12. I note the objector's comments that the recent behaviour of the landowner demonstrates that it cannot be trusted to keep paths in a useable condition. However, this is not an issue relevant to my decision on this Order.

¹ Planning application ref: P15/V2266/FUL

13. I consider that the diversion of the route away from the farmyard would have benefits for those working on the farm, avoid conflict between pedestrians and machinery and increase security around the gas storage tanks. On this basis I am satisfied that it is expedient in the interests of the landowner that the footpath be diverted.

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

14. Although the proposed diversion would be some 43 metres longer than the existing line of the footpath it would follow a route through open fields rather than partially through a working farmyard. Therefore, I do not consider this is significant in terms of what is likely to be a much longer recreational route, using this and other paths in the area. Further I do not agree that, given this small increase in length, the diversion would be "*needlessly circuitous*". Whilst the objector states that the path could be re-routed through the farm yard and avoid the new buildings, this would not resolve the hazards now faced by walkers navigating this busy farm.
15. There are currently no barriers to passage, such as gates or stiles, along the existing or proposed footpath. A bridge has been recently constructed at Point 'E' which appeared to be functional.
16. There is little to choose between the two routes in terms of convenience, both have broadly similar surface conditions, easy of navigation and topography – particularly where they travel through the same field. However, given the vehicle movements outlined above the proposed diversion would offer benefits in terms of pedestrian safety.
17. I accept that the farmyard has a concrete surface and therefore easier to walk on than a field. However, this is a relatively small section of the whole path and walkers would be prepared for walking across fields. Accordingly, the proposed diversion across a field would not be a substantial inconvenience.
18. On balance, I conclude that the new footpath will not be substantially less convenient to the public.

Whether the new path termination points (being on the same highway) are substantially as convenient to the public

19. The termination points would remain the same. Therefore the Order satisfies the test that the termination points would be on the same highway as the existing footpath and that the route would remain substantially as convenient to the public.

Whether it is expedient to confirm the Order having regard to:

(a) the effect the diversion would have on public enjoyment of the path as a whole

20. There would be minimal distance and visual differences between the existing and diverted routes. The diverted route would negate the requirement for the public to walk through the active farmyard.
21. Although the concrete surface of the farmyard makes walking easier, I found the proposed route to be relatively firm underfoot. Granted this was to be

expected given the prevailing weather conditions. The objector states that the “*proposed route crosses what is in effect a quagmire*”. I accept that due to weather conditions and farming operations fields do sometimes become wet and muddy. Nevertheless, a bridge has been installed at Point ‘E’ where the proposed route crosses a ditch and the path crosses the same field between Points ‘A’ – ‘E’ as the existing path. Additionally, neither the Parish Council nor the Ramblers Association raised any objections in this respect.

22. I also note that if a landowner fails to reinstate a footpath following disturbance of the surface, or fails to keep it clear of crops the Highway Authority have the powers to secure its reinstatement.

23. On balance, I find that there is no significant detrimental impact on amenity or enjoyment that would lead me to conclude the Order is not expedient in this regard.

(b) the effect which the coming into operation of the Order would have with respect to the land served by the existing right of way and the land over which the right is so created and any land held with it, having regard to the provisions for compensation

24. No adverse effects on the land served by the existing path or the land over which any new rights of way would be created have been identified.

Rights of way Improvement Plan ('ROWIP')

25. No issues have been raised by the parties in this regard and there is nothing to suggest that the Order is incompatible with the provisions of the ROWIP.

Whether it is expedient to confirm the Order

26. I have concluded that it is expedient in the interests of the landowner that the path be diverted, and that although there will be some disadvantages to the public they do not amount to being classed as substantial.

27. Therefore, on balance, the minor disadvantages to the public do not outweigh the significant advantages to the landowner. It follows that it is expedient to confirm the Order.

Conclusions

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

Formal Decision

29. I confirm the Order.

Joanne Burston

INSPECTOR

Appendix: Order Map

