



Order Decision

Site visits made on 11 June and 19 July 2018

by Helen Heward BSc Hons MRTPI

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

Decision date: 05 October 2018

Order Ref: ROW/3187354

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as the Doncaster Borough Council Bentley with Arksey Public Path No 25 Diversion Order 2016 (the Order).
- The Order is dated 7 September 2016 and proposes to divert the existing footpath as shown on the Order plan and described in the Order Schedule.
- There was one duly made objection outstanding at the time when Doncaster Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is confirmed.

Preliminary and Procedural Matters

1. Doncaster Borough Council, the order-making authority ("the OMA") supports the application. The remaining objection to the Order is from three local ward councillors. The parties agree that the case can be determined by written representations and there were no requests for an accompanied visit.
2. Amongst other things, the objectors are concerned that the order was not properly advertised. The Council has provided certification that the Order was published for the requisite six week period, copies of the Order posted on site and known landowners and tenants notified and there is no substantive evidence to suggest otherwise.
3. A section of the existing route of Bentley with Arksey Public Path No 25 (FP25) running between No's 163 and 165 Bentley Road is obstructed by boarding, a steel container unit and locked gates. Therefore, I was unable to fully inspect the route on my first site visit and arrangements were made to provide access on a second visit, which was otherwise unaccompanied.
4. On 31 July the Council clarified a number of points. I have taken both the Council's comments and the objectors' response of 4 August into consideration.

Main Issues

5. Section 257(1) of the 1990 Act provides for the stopping up or diversion of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the 1990 Act. Therefore to confirm the Order I must be satisfied that planning permission in respect of the development has been granted, and that it is necessary to authorise the stopping up in order to enable the development to be carried out in accordance with that planning permission. This latter requirement cannot be satisfied if the permission has been implemented. Case
-

law has established that some substantial part of the development permitted must remain to be carried out.

6. Paragraph 7.15 of Defra Circular 1/09 advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the stopping up of the ways to members of the public generally or to persons whose properties adjoin or are near the existing public right of way should be weighed against the advantages of the proposed order.
7. Therefore the main issues in this case are (i) whether the Order is necessary to enable development to be carried out, (ii) whether development is substantially complete, and (iii) the effect of the Order on those whose rights would be extinguished by it.

Reasons

8. FP25 provides a route from Bentley Road (Order plan point A) to a footbridge (B) which it crosses to reach Frank Road (C). The Order would extinguish that part from Bentley Road to the footbridge (A-B). It would be replaced with a new section from another point on Bentley Road (D) to join existing FP25 at B. The footbridge crossing to Frank Road would remain (B-C).

Whether the Order is necessary to enable development to be carried out

9. FP25 section A-B passes under an archway between No's 165 and 163 and across to the rear boundary where it emerges and turns almost 90 degrees to run south behind a few properties until it meets the footbridge at B.
10. In March 2017 planning permission was granted for a ground floor extension to the side/rear of the existing shop at Bentley Food & Wine Store, 163 Bentley Road¹. The development would be directly over part of section A-B of FP25. The permission is valid for three years. I am satisfied that the planning permission is extant and directly relates to land crossed by the Order route.
11. That part of A-B emerging from the rear of No 163, and which turns south to run to the footbridge, is beyond the planning application site. In this way the closure would go beyond what is necessary to enable development to be carried out. The Council advise that the route north of where FP25 emerges from No 163 is un-adopted and has no recorded status. Therefore, if the part of section A-B beyond the application site were not included in the Order, the effect would be to create a dead-end or cul-de-sac on FP25. For this reason, and on the evidence before me, I conclude that it is reasonable and necessary that the Order should include the entirety of section A-B on the Order plan.

Whether development is substantially complete

12. From the evidence before me and my observations on site I find nothing to say that the existing boarding and steel container would form part of the approved development. I conclude that the development allowed by the planning permission is not substantially complete.

The effect of the Order on those whose rights would be extinguished by it

13. The closure and diversion routes both provide a route from Bentley Road to Frank Road and across the footbridge. Both run to the rear of properties on Bentley Road. The diversion would start from close to 143 Bentley Road (D).

¹ Appeal reference APP/F4410/W/16/3166034

- It is a short distance south of A. Section A-B of FP25 runs north of the footbridge. D-B runs south of the footbridge. Both the length and configuration of the existing and proposed diversion routes would be similar and the width would be the same (3m).
14. There are no very steep slopes but Section D-B would cross uneven open ground and there is a change in levels. However, the Order would require that the alternative highway for the diversion be created "to the reasonable satisfaction of the Doncaster Borough Council". This affords the Council the ability to ensure it is constructed to a suitable urban path specification. Part of the route of A-B is also rough and uneven unmade ground. The diversion route would not be significantly more open to the effects of inclement weather.
 15. On my visits I saw people following well-trod routes in the general direction of the diversion route. A bus stop on Bentley Road is closer to D than A. For the purpose of getting between Frank Road, and shops and services located along or accessed from Bentley Road, route C-B-D would be generally as convenient as route C-B-A.
 16. The objectors argue that the diversion will remove a pedestrian route between Frank Road and an open space and games area north of FP25. On my visits it appeared that this route was well used. I have no doubt that pedestrians wanting to get from Frank Road to this open space and back would find this route to be the shortest and most convenient. However, pedestrians going from Frank Road to the open space would have to leave FP25 where it turns to cross the property of No 163. They would then follow the section of track where the Council advises that there are no public rights of way or highways.
 17. The diversion would allow pedestrians to continue to cross the footbridge to reach Bentley Road via section B-D. Following the diversion from Frank Road to reach the open space area would be slightly longer, but not materially less convenient, than that which a pedestrian would have to follow if they sought to reach the open space via existing FP25 and the highway network.
 18. I conclude that the diversion route D-B would be of similar length, similarly configured and of similar commodiousness and general amenity value as the existing route A-B. The diversion would be as convenient as the existing for pedestrians going between Frank Road and Bentley Road. However, it would create a slightly longer route for pedestrians seeking to reach an open space and games area. For these users the Order would have a minor adverse effect.

Other Matters

19. There is no doubt that FP25 is obstructed, but this and the Council's approach to enforcement of public rights of way are not material to this case. Whilst the planning permission is very relevant, it is not for this appeal to reconsider the materiality and weight given to considerations in that case.
20. This decision does not affect private rights. Nor is it for this appeal to explore if unrecorded rights of way exist, or seek to determine if there are public rights of way that are not recorded on the Definitive Map.
21. There is a single storey building at the back of No 143 extending out beyond the general line of the rear boundary of properties indicated by the Order plan. There is a multi-stemmed tree/trees close by and an extractor flue and other plant on the side of No 143. At my request the Council checked this

information. On the 31 July the Council confirmed that the Order route would not be obstructed by these features.

22. Matters pertaining to path clearance and service vehicle access are matters for the Council.

Conclusions

23. A planning permission exists which directly relates to land crossed by the Order route and development is not substantially complete. Although the Order affects land beyond the area of the planning permission I found it reasonable and necessary to do so.
24. The diversion route D-B would be of similar length, similarly configured and of similar commodiousness and general amenity value as existing route A-B. It would create a slightly longer route for pedestrians seeking to go between Frank Road and a games/open space area. For these users the Order would have a minor adverse effect.
25. Overall I conclude that the adverse effects to members of the public generally or to persons whose properties adjoin or are near the existing public right of way are limited and do not outweigh the advantage of enabling development to be carried out in accordance with a planning permission already granted.
26. Therefore, and having regard to all other matters raised in the written representations, I conclude that the Order should be confirmed.

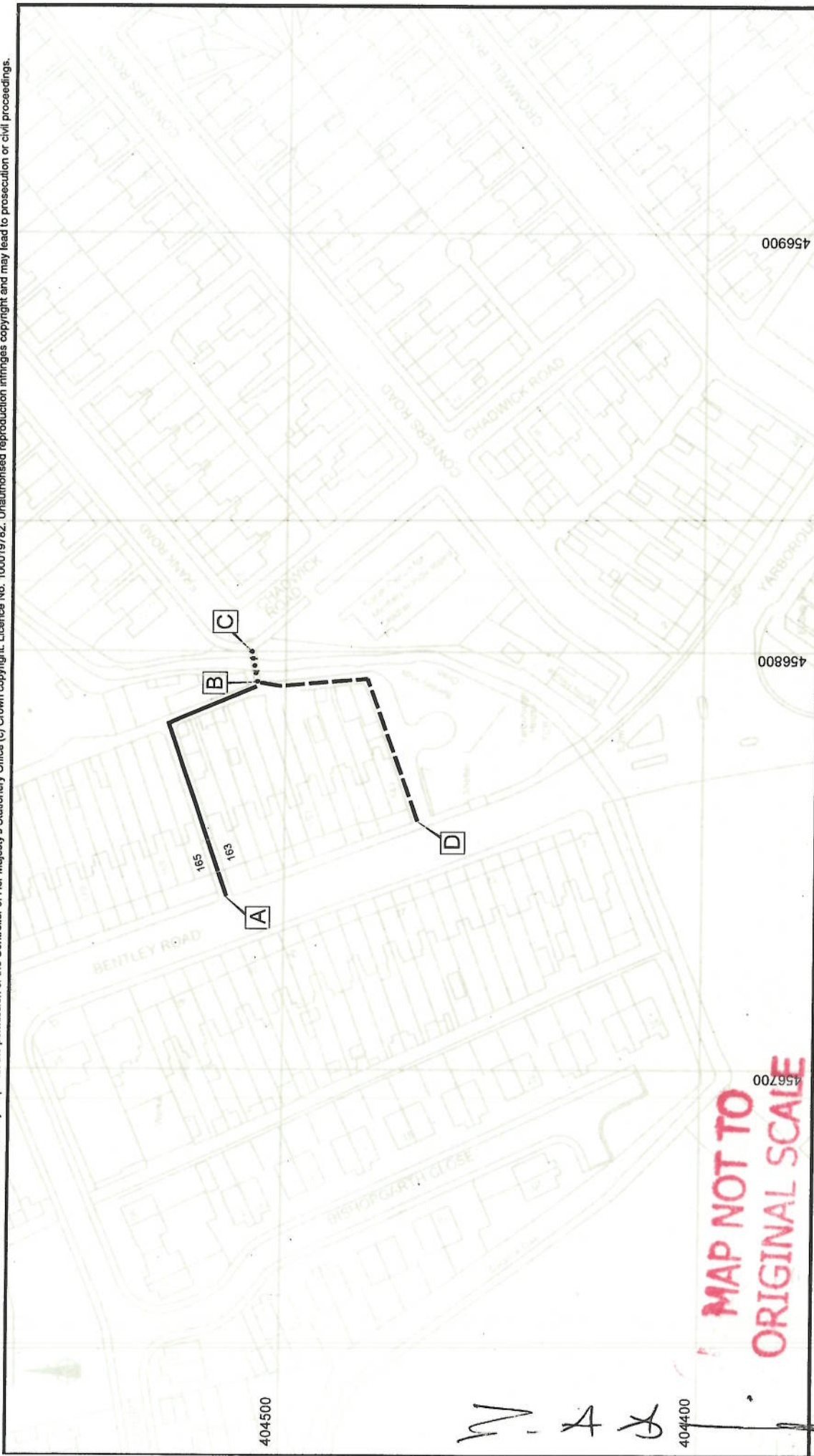
Formal Decision

27. The Order is confirmed.

Helen Heward

INSPECTOR

Includes information reproduced from the Ordnance Survey Map with the permission of the Controller of Her Majesty's Stationery Office (c) Crown copyright. Licence No. 100019782. Unauthorised reproduction infringes copyright and may lead to prosecution or civil proceedings.



Key
 — Footpath to be extinguished A - B
 ●●● Existing Public Footpath B - C
 - - - New Diverted Footpath Route B - D

GRID REFERENCES
 A - SE 5674 0452 C - SE 5680 0451
 B - SE 5679 0451 D - SE 5676 0446

Date APRIL 2016 Scales 1/1250

DONCASTER BOROUGH COUNCIL
 TOWN & COUNTRY PLANNING ACT 1990 Section 257
 DIVERSION ORDER 2016
 Bentley with Arksey Public footpath No.25


Doncaster
 Metropolitan Borough Council
 Tel. 01302

MAP NOT TO ORIGINAL SCALE

W.A.D. 404400