
Order Decision

Site visit made on 24 September 2018

by K R Seward Solicitor

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

Decision date: 05 October 2018

Order Ref: ROW/3196245

- This Order is made under Section 119 of the Highways Act 1980 ("the 1980 Act") and is known as the Public Path Diversion Order 2017 Footpath 22 Southminster and Footpath 8 Dengie in the District of Maldon.
- The Order is dated 15 December 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 Essex 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 subject to the modification set out below in the Formal Decision.

Preliminary Matters

1. In addition to the one outstanding objection made by Mr Brian Thomas, a statement of case was received from Malcom Lees of the Open Spaces Society Essex LC after referral of the Order to the Secretary of State for determination. Asheldham and Dengie Parish Council confirmed that it unanimously agreed to support the Order. I have taken into account all representations received.
2. No-one requested an inquiry or hearing into the Order and so I made an unaccompanied site inspection.
3. I have found it convenient to refer to points along the existing and proposed routes as shown on the Order Map. Therefore, I attach a copy for reference purposes.
4. I understand that the whole of the proposed route has been made available for use by the public. Whilst it is not signed as such on site, a notice erected in the car park located off the highway before point A says that it is for visitors to Middlewick Wind Farm and to 'facilitate use of the permissive footpath'.
5. Parts of the existing route are currently inaccessible to the public due to the removal of footbridges over three drainage channels which have very steep banks. Whilst not all of the route could be walked in consequence, I was still able to see sufficient to allow me to arrive at a determination.
6. Mr Lees says that the Order map does not correspond with the ones displayed on site. By the time of my site the public notice was still on display, but there was no map. The notice describes two Orders. This Decision concerns one Order only for the route marked as A-B-C. The other Order relates to the path north of point C. The notice refers the public to the map being available for inspection at the district council offices and public library. There is no

indication that the wrong plan was deposited at those locations. Mr Lees has been able to make comments on the existing and proposed routes albeit some comments refer to other points not included in this Order.

Main Issues

7. The Order has been made in the interests of both the public and the landowners whose land is crossed by the footpaths proposed for diversion. 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 paths will not be substantially less convenient to the public in consequence of the diversion; and
 - (c) it is expedient to confirm the Order having regard to:
 - (i) the effect of the diversion on public enjoyment of the path 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 paths would be created together with any land held with it.
8. 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 public and owners of the land that the paths in question should be diverted

9. The current definitive line of Footpath 22 Southminster ('FP22') runs across ploughed and cropped fields. As the path proceeds north, it becomes Footpath 8 Dengie ('FP8') at the parish boundary. Aside from the agricultural use, the land crossed by both paths also forms part of Middlewick Wind Farm.
10. The Order is expressed to have been made in both the interests of the public and the landowner. No reasons are advanced to explain why it is in the public interest to divert the paths. The Order can be modified without the need to re-advertise by deletion of the reference to the diversion being in the interest of the public. I shall disregard the reference accordingly.
11. The application was made by Ridgewind Ltd although Essex County Council as the Order Making Authority ('OMA') says that it instigated the diversion. The reason given for the diversion is that the path cuts across farmland whereas the new route runs along an existing track which the public already walk. The OMA states that "*The landowner who erected the wind turbines sees the logic in diverting the path.*"
12. Despite the brevity of the reason, it would clearly be more convenient for the landowner if the paths were diverted onto an existing track than to reinstate the definitive line across the land in agricultural production.

13. I am satisfied that it is expedient in the interests of the landowner for the footpaths to be diverted.

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

14. When considering the convenience of the routes included in the Order it is appropriate to assess them as if they were available, unobstructed and maintained to a standard suitable for those who have a right to use them. Therefore, I shall disregard the fact that the definitive line has been obstructed by barbed wire and also made inaccessible by the absence of bridges over the ditches.
15. The existing route is of undefined width. It extends through the fields in a north-easterly direction before curving around to a north-westerly direction continuing through the fields to reach the footbridge at Point C.
16. The diversion is a 2m wide path which follows a wide track that heads north from point A for approximately 70m before turning north-east. It then winds alongside the field edge as it proceeds in a northerly direction. Where the track ends, there is a grassed path which leads along the bank of Asheldham Brook where the path heads east to reach the footbridge at Point C.
17. Both routes curve in direction. They very broadly run parallel in a southerly to northerly direction. There is no change in termination points. At approximately 1610m in length, the proposed route is longer than the existing alignment which measures around 1510m. No issues have been raised regarding the additional length.
18. There are three ditches along the existing route which need to be crossed by bridges. There are no limitations for the diverted route which for the most part follows an existing track. The track has a hard gravel surface which I found to be reasonably flat and even. The remainder is grassed with a trodden line.
19. It is submitted by Mr Lees that the track becomes water logged after heavy rain. A photograph supplied in illustration shows a grassed track with water filled ruts. It appears to be a section of path not included within the Order. Where the proposed route becomes a grassed track, it could become boggy under foot but it is unlikely to be any worse than the existing cross field path. Indeed, the surface condition could well be better than the existing route which stretches through the fields along an undefined and unmade path.
20. Ultimately, there is no reason to suppose that any issues arising with surface water could not be rectified. If it is highway maintainable at public expense then that will be the responsibility of the local highway authority.
21. In the circumstances, I do not find that the new paths to be substantially less convenient to the public.

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

22. Objection is raised over the proximity of the proposed route to the wind turbines. It is suggested that the route should be moved further east away from the turbines. If there is a preferable route away from the wind turbines, it is not before me. Invariably with any proposed diversion there may be other

routes which could be more desirable, but that is not the test. I must consider the route of each path as shown in the Order against the relevant tests identified above.

23. There are three wind turbines in particular which are closest to the both the existing and proposed paths. The OMA has provided figures and a map to illustrate that the diverted path is around 30m further away from one wind turbine than the existing route. Another turbine is equal distance away at about 47m. The diversion is 12m closer to a third turbine, but there is still a 50m separation distance. These figures have not been contested. Overall, the proximity of the proposed route to the turbines is no worse than the existing paths and if anything is slightly better.
24. Noise generated from the wind turbines disturbs the tranquillity, but that is the case with both the existing and proposed route. The existing cross field route has uninterrupted views over the open fields to the east once past the southernmost turbine. Even so, the turbines remain dominating features in the landscape of which a walker cannot fail to be aware. Whichever path is taken it goes through part of the wind farm affecting the experience in similar measure.
25. The field edge track for the diversion runs beside a ditch with long grasses, reeds and some hedgerow behind, all of which attract wildlife. This may well be more appealing to some walkers interested in spotting wildlife. Information boards have been erected along the permissive path to illustrate examples of wildlife species that inhabit the wind farm. A basic wooden bench has also been provided next to one information board. These features help to enhance a walkers' appreciation of the paths.
26. As a laid out track, the new route is easy to follow. In contrast, navigating through the fields trying to follow the definitive route is not easy without a clear line and this impedes its enjoyment. Signs advise that a 15mph speed limit should be observed by vehicles using the track for the diversion. Nevertheless, the terrain is flat with long distance views allowing vehicles to be seen from afar. The track is wide with verge also at the side which should suffice to accommodate both walkers and vehicular traffic.
27. Looking at the diverted paths as a whole, I do not consider that there would be an adverse effect on public enjoyment in either case.

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

28. There is no evidence that the diversions will have any adverse effect on land served by the existing paths or on the land over which the alternative paths will be created.

Rights of Way Improvement Plan ('ROWIP')

29. None of the parties suggest that the Order is contrary to any material provision contained in a ROWIP.

Whether it is expedient to confirm the Order

30. I have concluded in my considerations above that the Order is expedient in the interests of the landowners. The proposed paths will not be substantially less

convenient and I am satisfied that it is expedient 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

31. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modification described in paragraph 10 above.

Formal Decision

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

- In the first paragraph delete the words "*the public and*".

KR Seward

INSPECTOR

See Plan
DEN 8D North

DENGIE

PLAN SOUTHM 22 A north

Diversion of Footpath 22 Southminster / 8 Dengie

Route to Close A-B-C

New Route A-C

Unaffected Routes

Definitive Map Sheet TR 09 NW & TM 00 SW

Scale 1:2500 at A3

Footbridge

Asheldham Brook

C





MAP NOT TO
ORIGINAL SCALE

8

DENGIE



 
integrated expertise
Essex County Council

H. Dawn
Assistant
Officer



DENGIE

PLAN SOUTHM 22 A south

Diversion of Footpath 22 Southminster / 8 Dengie

Route to Close A-B-C

New Route A-C

Unaffected Route

Definitive Map Sheet TR 09 NW

Scale 1:2500 at A3



MAP NOT TO ORIGINAL SCALE

B

22

SOUTHMINSTER

22

H. DANIEL
Attesting Officer

A

