



Order Decision

Hearing held on 9 January 2018

by **Michael R Lowe** BSc (Hons)

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

Decision date: 29 October 2018

Order Ref: RoW/3174305

The Council of the City of Wakefield

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the **Public Path Diversion Order and Definitive Map and Statement Modification Order No 7, 2016 Public Footpath Normanton 31**.
 - The Order is dated 1 August 2016 and proposes to divert part of footpath 31 in the vicinity of Woodhouse Crescent, Normanton as shown on the Order map and described in the schedule.
 - There was one objection outstanding when the Council of the City of Wakefield (the Council) submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.
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Decision

1. I confirm the Order subject to the following modifications, which do not require advertisement:

In Part 1 of the Schedule replace point 'C' with point 'B', replace point 'B' with point 'D' and replace point 'D' with point 'C'.

In Part 2 of the Schedule replace point 'C' with point 'B', and replace point 'D' with point 'C'.

On the Order map add the point 'D' at the point at which the path to be stopped up diverges at Norman Court and add to the key of grid references 'D; GR 3859 2160'.

Preliminary Matters

2. The Council requested some minor corrections to the drafting of the Order, which I have agreed, as set out above. I am satisfied that these minor corrections to the drafting do not cause prejudice to any persons.
 3. Mr Snell, the objector to the Order, refers to the covenant in the land title relating to a conveyance in 1962 between the Urban District Council of Normanton and Saml. Smith Old Brewery (Tadcaster) Ltd, for part of the land to be 'set aside developed and maintained by the purchaser as open spaces and ornamental plots in a manner to be approved by the Council'. In my view this covenant does not give rise to any public rights nor is it of any relevance to the proposed footpath diversion.
 4. Mr Snell has also raised matters concerning the obstruction of the footpath, contrary to the provisions of the Highways Act, but these are matters to be addressed by the Council and are not relevant to my decision.
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Background

5. The Council made the Order in August 2016, following an application made by Wakefield District Housing Ltd. (Wdh Ltd.). Wdh Ltd. is a registered provider of social housing formed to take the transfer of the social housing stock of the Council. Included in the transfer was a housing estate in Normanton surrounding a grassed area of open space. At the southern end of the grassed area was a public house called the 'Norman' that ceased trading in 2010.
6. Wdh Ltd. purchased the land of the former public house and have developed the combined site for 45 units of social housing. During the planning process objections included the issue of a footpath across the site and, in response, the Council imposed a condition requiring a 2 metre footway around the perimeter of the new housing site.
7. In November 2014 the Council received an application to add a footpath to the Definitive Map and Statement of Public Rights of Way. In October 2015 the Council made a Definitive Map Modification Order to record the footpath on the Definitive Map and Statement. However, by that time the housing development had reached a stage whereby some 9 housing units were obstructing the footpath and the procedures of section 247 of the Town and Country Planning Act 1990¹ were no longer appropriate. Wdh Ltd. therefore made the application under the provisions of the Highways Act 1980.

Main Issue

8. The requirements of section 119 of the Highways Act 1980:
 - (1) Whether it is expedient in the interests of the owners of the land or of the public that the footpath in question should be diverted;
 - (2) Whether the diverted footpath will (or will not) be substantially less convenient to the public;
 - (3) Whether it is expedient to confirm the Order, having regard to:
 - (a) The effect the diversion would have on public enjoyment of the footpath as a whole;
 - (b) The effect the coming into operation of the Order would have as respects other land served by the existing public rights of way; and
 - (c) The effect any new public rights created by the Order would have as respects the land over which the rights are so created and any land held with it.

A diversion must not alter the point of termination of a footpath: (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another highway connected with it, and which is substantially as convenient to the public.

I must have regard to any material provisions of the rights of way improvement plan of the area.

¹ Procedures to divert a public footpath to enable development in accordance with planning permission.

Reasons

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

9. The Order has been made because it appears to the Council that the diversion is expedient in the interests of Wdh Ltd. as the landowner. The Council submits that Wdh Ltd. would inevitably have to remove 9 properties, valued at £1.35M, unless the diversion order was confirmed. Such a loss of assets and income would have a significant adverse effect on the company's ability to discharge its functions as the primary provider of social housing in the area.
10. In my view there are clear benefits to Wdh Ltd. from the proposed diversion of the footpath for the reasons given by the Council. I am therefore satisfied that the proposed diversion of the footpath would be expedient in the interests of the owner of the land.

Whether the diverted footpath will (or will not) be substantially less convenient to the public

11. The Council and the applicant submit that the footpath across the grassed open space (before the housing development) was 1.2 metres wide, poorly surfaced and lacked street lighting. The proposed diverted footpath route is 2 metres wide, has street lighting and is newly constructed of tarmac with drainage. The new route is due to be adopted as a highway maintainable at public expense. The Council and Wdh Ltd. submit that the proposed diversion will be no less convenient to the public and will be more suitable for use by all sections of the public, including those with disabilities.
12. The proposed diversion is longer as it follows a route around the perimeter of the former grassed area. The original footpath diverged into two branches at the junction with Queen Elizabeth Drive. The diverted route would increase from 101m to 124m on the westerly route (A to B on the Order map) and from 173m to 212m on the easterly route (A to C on the Order map).
13. Mr Snell, who is the sole objector to the Order, objects to the increased distance of the diversion and to the impediments associated with the diverted route being alongside the motor vehicle traffic of a road, 12 driveway crossings along A to B and 18 drive crossings along A to C, telegraph poles, cable boxes, vehicles parked in driveways extending over the footpath, wheelie bins left on the footpath, children cycling and playing ball games. These factors, in his opinion, render the proposed diversion substantially less convenient, especially to those who are elderly or have a mobility disability.
14. In my view the proposed diversion is less convenient to the public in terms of the increased walking distance and maybe less convenient on some occasions due to potential conflicts with access to properties and street traffic which the original footpath avoided. However, the proposal is more convenient in relation to the surface construction and lighting. Overall, in my assessment, the proposal is not substantially less convenient to the public. I reach this conclusion having regard to the Public Sector Equality Duty under the Equality Act 2010 and the interests and needs of those with mobility disabilities. In my view the proposed diversion would not be less convenient to disabled people, balancing the increased distance with the improved surface, lighting and width.

Termination points

15. The proposed diversion does not alter the termination points.

Whether it is expedient to confirm the Order

The effect which the coming into operation of the Order would have as respects other land served by the existing public rights of way

The effect which the new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it

16. These issues are not in dispute and I am satisfied that such matters do not adversely impact upon the confirmation of the Order.

The effect the diversion would have on the public enjoyment of the footpath as a whole

17. The whole of the footpath is to be diverted around the new housing development. In my view the proposed diversion would not have a substantial adverse impact upon public enjoyment of the footpath as part of a wider network within the housing estate.

The Rights of Way Improvement Plan

18. Wakefield Council's Rights of Way Improvement Plan states that the Council will look at opportunities to improve the network for those with mobility problems. It also states the Council will look at opportunities to change the network where it may result in a decrease in anti-social behaviour.

19. In my view the proposed diversion has aspects that may benefit those with mobility problems, such as an improved surface and lighting, whilst the increased distance will be a disadvantage. There are aspects of the proposal that may reduce the potential for anti-social behaviour due to the alternative footpath being overlooked and illuminated. The Police Architectural Liaison Officer considered the site layout to be an excellent example of a residential development incorporating a wide range of 'designing out' crime measures.

Overall Expediency

20. Whilst the 1980 Act details specific matters that must be considered within the expediency test there is no limit upon other material matters which may be considered under the heading of expediency.

21. I appreciate that the existing footpath provides a public amenity of crossing an area of grassed open space and that the development and the diversion combine to change the character of the footpath. However, that change has been the subject of a planning application and approval that has weighed the advantages and disadvantages of the development.

22. I attach substantial weight to the benefit of avoiding the need to remove 9 units of social housing. The proposed footpath diversion arises from a development with the benefit of planning permission to provide 45 units of social housing. The design layout seeks to reduce the opportunity for anti-social behaviour and has the support of the Police. The provision and protection of social housing may benefit those groups with relevant characteristics under the Equalities Act who are likely to have a disproportionate reliance on social housing.

23. In this case it appears to me that there are advantages to the public from the diversion and that, whilst there are some aspects of the diversion that are disadvantageous, such as the increased distance, these disadvantages are outweighed by the advantages.

24. Overall, I am satisfied that it is expedient to confirm the Order.

Conclusion

25. Having regard to all these and all other matters before me I conclude that the Order should be confirmed with the modifications as set out above.

Michael R Lowe

INSPECTOR

APPEARANCES

The Council of the City of Wakefield

Alison Frost
Stephen Mills

Legal Advisor
Public Rights of Way Officer

The Applicant for the Order

Paul Whatley

of Counsel, instructed by Wakefield and District
Housing Ltd.

Paul Neal

Wakefield and District Housing Ltd.

The Objector

Stuart Snell

Interested Parties


Councillor David Dagger
John Churms

Normanton Ward

MAP NOT TO ORIGINAL SCALE

Path to be stopped up 
Path to be created 

Grid References
A : GR 3858 2168
B : GR 3859 2158
C : GR 3862 2158
D : GR 3859 2160

0  0.05883
kilometres
Scale: 1:1,250

