



Order Decision

Site visit made on 18 December 2018

by Helen Heward BSc Hons MRTPI

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

Decision date: 19 March 2019

Order Ref: ROW/3196250

- This Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act) and is known as the Copeland Borough Council Public Footpath No 403001 (Part) Diversion Order No 1 2016 (the Order).
- The Order 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 Copeland Borough Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: The Order is not confirmed.

Preliminary and Procedural Matters

1. Copeland Borough Council is the Order Making Authority (OMA) and supports the application. The applicant is High Grange Developments Ltd (developer).
2. The parties agree that the case could be determined by written representations and I carried out an accompanied site visit on 18 December 2018. Although development is under construction the developer was able to afford access and I was able to inspect the area of the proposed diversion.
3. Prior to my visit the OMA clarified several points regarding the planning permissions and this was forwarded to the objector for information. I have taken the OMA's, applicant's and objector's comments into consideration.
4. The Order is not dated. A copy of the Council's Seal Register confirms that the date of the Seal is 11 October 2016. The Order plan identifies the entire route of existing Footpath 403001 (FP) by way of a bold black line instead of just that section to be diverted. If I were minded to confirm the Order, these matters could be dealt with by way of minor modifications.

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 to enable development to be carried out in accordance with planning permission already granted under Part III of the 1990 Act. 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 to enable the development to be carried out in accordance with that planning permission. This 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. 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
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substantially complete, and (iii) the effect of the Order on those whose rights would be extinguished by it.

Reasons

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

7. Outline planning permission (4/12/2259/001) (OP) was granted in 2012 for the development of 66 houses on land crossed by the FP. The layout was not approved at that time. An informative advising that the FP should not be obstructed during or after construction was advisory only.
8. Development proceeded in phases. Early phases did not affect the route. In 2016 the planning authority issued an approval of reserved matters (4/16/2181/OR1:8) (RM) for Phase 6: plots 41-45 and 61. The parties agree, and the approved drawing for Phase 6 shows, that the existing FP would go through gardens at Plots 44 and 45 and part of the dwelling on Plot 45.
9. The proposed diversion would re-route the FP from the existing swing gate at Point A, around the outside of the rear garden of Plots 44 and 45 and then continue along the edge of the development site.
10. The RM is valid for 3 years. I am satisfied that it is extant and directly relates to land crossed by the Order route. It is reasonable and necessary for the FP to be diverted for the RM to be implemented.

Whether development is substantially complete

11. Large parts of the site to which the OP was granted have been built out. But it was not until the approval of the RM that it became necessary to authorise the proposed diversion to enable development to be carried out.
12. On my visit I observed that most of the Phase 6 dwellings are well under construction, including that on Plot 44. Boundary fencing has also been erected including around the rear of Plot 44. The objector believes that this may obstruct the FP although the developer disputes this. Nonetheless, I noted that there were scant signs of above ground construction works for the dwelling on Plot 45. 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 County of Cumbria Definitive Map and Statement describes FP 403001 as "*from north-west corner of Mill Hill estate at GR0102-1605, north-easterly to Hope Pit (disused) thence southeasterly to Hope Pit Cottages and northerly to Bowthorn Colliery road*". An A4 black and grey scale printed image from the Definitive Map indicating the FP by way of broken line is very hard to read.
14. A second map using a more up to date OS base shows the FP proceeding southeasterly to Hope Pit Cottages before running east for a short distance. It then turns again in the northerly direction referred to in the written statement. At the site visit the parties were in broad agreement that these turns occur within an area that looked like private garden at Hope Pit Cottages. I agree, but there are no measurements to specify where the turns occur, there is no sign of the FP on the ground within this area and the route is obstructed by boundary features and fencing. I could not be certain where the legal alignment of the FP leaves this property to cross the developer's land.
15. The route across the developer's site is over land that has been previously worked. Walking south, once past the swing gate (at Point A) there is no clear trod path and no clearly identifiable physical features. The developer considers

- that their interpretation of the Definitive Map route as shown on drawing 06/11/542-116 is accurate and the OMA agrees. On site the objector indicated a straight-line running south from the swing gate. The developer pointed to a broadly level route toward the outside edge of the worked ground.
16. This adds to the confusion about the legal route of the FP. It becomes crucial at the point where the Order proposes that the diversion would link back onto the FP at Point B; at grid reference 301137.2E/516076.9N. But there is nothing to say in the documentary evidence that the legal alignment of the FP passes through this grid reference.
 17. On site the developer indicated that it was at a point along a section of path running between the development site and the outside of a boundary at Hope Pit Cottages. The FP only crosses this path and the parties could not agree when I was standing at that point, or grid reference 301137.2E/516076.9N. I found little on the site to assist in determining if the diversion would re-join the legal alignment of the FP at Point B.
 18. Without such certainty I cannot be satisfied that the proposal would not result in the creation of two unconnected cul-de-sac sections of the FP; preventing walkers from being able to walk to and from the countryside in the locality. Nor can I assume that walkers would be able to use the path on the outside edge of Hope Pit Cottages to bridge any gap.
 19. An alternative route via FP 403014 to the east is available but would be much less convenient for residents in this part of the settlement. Moreover, if the continuity of the FP were to be broken a potential circular walk along both paths would be frustrated. These potential disadvantages to members of the public would be adverse and attract substantial weight against the proposal.
 20. It had recently rained but the route of the diversion was reasonably dry when I walked it. I noted that the section of the FP north of Point A is unmade, across slightly uneven ground and damp and boggy in places. The surface could be made up to a specification to be approved by the Highway Authority.
 21. It is reasonable to believe that for many years people could have skirted the edge rather than try to scale spoil heaps or risk other hazards to follow the route of the FP. The developer has also already constructed a diversion around the outer edge of the site and this appears to be the route walkers now follow.
 22. The amenity of the diversion along the field edge, bound by a stock fence would feel somewhat less rural than the section to the north of Point A, but more so than that part of the existing path to the south from Mill Hill to Hope Pit Cottages. These aspects of the proposed diversion would not materially change the amenity value of the FP, or otherwise make it less favourable or commodious, and would not disadvantage the public generally.
 23. On the contrary the provision of a clearly visible route over generally level ground and the removal of the FP from an uncertain, difficult and potentially hazardous route over the former worked ground would represent an improvement for the public, particularly the less able. There is little evidence regarding historical significance of the FP.
 24. Several other turns along the route are also identified by grid reference. If the Order were confirmed it would be for the developer to provide the route in accordance with them and for the Highway Authority to enforce any breach. On the ground the surfaced path and fenced edge would guide walkers.

25. Nonetheless, given my concerns regarding the lack of certainty that the diversion would link to the legal alignment of the FP at Point B, I conclude that the diversion would disadvantage those persons whose rights would be extinguished by the diversion or members of the public generally.

Other Matters

26. It is no part of the proposal to divert the FP where it crosses land at Hope Pit Cottages. There is no doubt that the existing FP is obstructed in places, but this and the OMA's approach to enforcement are not material to the case.
27. Whilst the planning permission for the development requiring the FP to be diverted is very relevant, it is not for this decision to review or reconsider the materiality and weight given to considerations in the planning processes and decision making of Copeland Borough Council. Obstructions of the existing FP are matters for the Highway Authority. Nor do I attach weight to comments regarding difficulties in obtaining information from Copeland Borough Council and Cumbria County Council or the behaviour of individuals.
28. There are no objections from the Ramblers Association or the Highways Authority and only one interested party. The developer also draws attention to benefits of the delivery of the residential development. These were no doubt of importance to the planning proposals, but they are neutral in this case.

Conclusions

29. Planning permission exists which directly relates to land crossed by the Order route and development is not substantially complete. I found that the stopping up or diversion of a footpath is necessary to enable development to be carried out in accordance with the planning permission. This attracts weight in favour.
30. The proposal would not make the FP materially longer, less amenable, favourable or commodious than the existing FP. On the contrary the removal of the FP from the uncertain and difficult route over former worked ground would represent an improvement, particularly for the less able. This also attracts weight in favour. However, I could not be satisfied that the diversion would connect with the legal alignment of the FP at Point B. Thus, leaving a potential break. Problems with the Order Map and the Definitive Map copies added to the difficulties. The potential adverse consequences of a break in the FP for members of the public outweigh the advantages.
31. I have considered if I could remedy this problem by a modification to the Order route, but I cannot be certain that to attempt to do so would not cause an injustice to other parties, nor can I be certain of the deliverability and hence enforceability of any such change. Therefore, and having regard to all other matters raised in the written representations, I conclude that the Order cannot be confirmed.

Formal Decision

32. The Order is not confirmed.

Helen Heward

Inspector