



Order Decision

Site visit made on 15 October 2019

by Alan Beckett BA MSc MIPROW

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

Decision date: 07 November 2019

Order Ref: ROW/3219089

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Shropshire Council (Footpath 16 (Part), Parish of Berrington) Public Path Diversion Order 2018.
- The Order is dated 6 September 2018 and proposes to divert part of footpath 16 as shown on the Order plan and described in the Order Schedule.
- There was 1 objection and 1 representation outstanding when Shropshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case based on the written representations forwarded to me. I made an unaccompanied inspection of the path at issue on Tuesday 15 October 2019.

Legislative Framework

2. Section 119 (1) of the 1980 Act requires that, before confirming an Order, I should be satisfied that it is expedient, in the interests of the owner, lessee or the occupier of land crossed by the path or way, or of the public, that the line of the path in question should be diverted. Where an Order proposes to alter the termination point of the path in question, I must also be satisfied that the proposed new terminal point is on the same highway or a highway connected to it, and that the new termination point is substantially as convenient to the public.
3. If I am to confirm the Order, section 119 (6) of the 1980 Act requires that I must be satisfied that the path will not be substantially less convenient to the public as a consequence of the diversion. If I am satisfied on these matters then I must consider whether it is expedient to confirm the Order, having particular regard to the following issues:
 - a) the effect that the diversion would have on public enjoyment of the path as a whole;
 - b) the effect of the coming into operation of the Order on land served by the existing path and the land over which the new path is created together with any land held with, having regard to the provisions as to compensation.
4. In addition, in determining whether or not to confirm the Order, Section 119 (6A) of the 1980 Act requires that I should give consideration to any material

provision of a rights of way improvement plan ('ROWIP') prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.

5. Furthermore, I need to consider what impact (if any) the proposed diversion would have upon the needs of agriculture and forestry¹ or the biodiversity² and natural beauty of the area³. I must also consider whether the public sector equality duty would be discharged by this proposal.

Main Issues

6. I must be satisfied that the Order meets the criteria set out in the legislative framework set out above. To assist in the interpretation of these criteria, I have had regard to the judgement in the case of *R (Young) v Secretary of State for Environment, Food and Rural Affairs* (QBD) [2002] EWHC 119 (Admin) ('*Young*').
7. The Order has been made in the interests of the owner of the land crossed by the line of part of footpath 16.

Reasons

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

8. The applicant submits three reasons for seeking the diversion of the footpath. First, that access to the field for agricultural machinery would have to be moved from point A to point C when the house is built. Not moving the footpath would result in two access routes through the field. Secondly, it is proposed to re-instate the dried-up pool on site (shown as 'pond' on the order plan but which is an area of succession woodland) and it would be preferable for ramblers not to be walking at the pond edge. Finally, the trees in the copse are maturing and roots underfoot make the footpath difficult to traverse for the less mobile.
9. The Council submits that the Order is in the interests of the landowner for reasons of privacy and security as it abuts the eastern boundary of a plot of land which has planning permission for the erection of a dwelling.
10. In objecting to the proposed diversion, the Open Spaces Society (OSS) submits that the planning permission granted on the land was not a relevant consideration as the path is well away from the site of the proposed house; a fact implicit in the Council's use of the 1980 Act. The proposed diversion would also duplicate the function of the western arm of footpath 16 and would be less convenient to those users wishing to travel east to Berrington church and connecting footpaths. Furthermore, there were no issues with the condition of the path through the copse.
11. I saw from my site inspection that from point A the alignment of the current western arm of footpath 16 was marked by a prominent wear line in the ground. In the vicinity of the dried-up pool / copse there was no evidence of exposed tree roots posing a trip hazard to users or making the ground uneven; I am not persuaded that those who choose to walk footpath 16 are hindered or

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006

³ Section 11 of the Countryside Act 1968

- exposed to significant risk in this vicinity; conditions underfoot were what was to be expected from a country footpath.
12. Whereas the applicant may have to make alternative provision for agricultural access to the field if the projected house is built, the site plans show that the footpath would run outside the red line boundary of the development site and would not appear to interfere with it⁴. From my observations the footpath is approximately 15 metres from that part of the 'building' which is present on the site and is physically separated from the development site by the trees on the edge of the copse. The current position of footpath 16 would not therefore interfere with the proposed development.
 13. The Order plan shows the current line of footpath 16 to be approximately 10 metres from the pond edge as shown on the Order plan; users of the footpath would not therefore be at the edge of the pond as suggested by the applicant and are unlikely therefore to be at risk from the pond if were to be restored.
 14. The grounds set out by the applicant show a degree of concern for the safety of path users and could potentially be relevant had the order been made in the interests of the public. However, it was not so made. Having considered the submissions made by the applicant, I am not persuaded that it would be expedient to divert the footpath in the interests of the public had the order been made on those grounds. There are no issues of public safety arising from the use of the footpath and, as pointed out by the OSS, the eastern arm of footpath 16 appears to perform a different function to the western arm.
 15. I saw that some building works had been undertaken on the site and that a concrete pad and footings had been laid to show the outline of a prospective building. On the eastern, western and southern elevations some limited work had been undertaken to raise the external walls, but none of the walls extended beyond 9 courses of blockwork and there was no external wall at all on the northern elevation. There was no evidence of building materials being stored on site or of the usual plant and machinery associated with a house building project, nor was there any Heras or other such security fencing surrounding the 'building'. The land surrounding the 'building' was thick with weeds and the site had the appearance of a project which had long been abandoned.
 16. Consequently, I am not persuaded by the Council's submissions that it would be expedient to divert the footpath on the grounds of privacy and security; the site is unoccupied so members of the public using footpath 16 are not in proximity to what could be considered to be a 'private' space. Similarly, that there are no security issues on this site is demonstrated by the 'building' not being protected by any form of security fencing normally found on a building site.
 17. I am not satisfied that the reasons given for seeking the diversion demonstrate that it would be expedient, in the interests of the owner of the land, that footpath 16 should be diverted.

⁴ The applicant's plan 1 appended to his Statement of Case

Whether the terminal points of the proposed highway are on the same highway as the path to be diverted or on a highway connected with it and are substantially as convenient to the public

18. The proposed diversion would replace the current northern terminal point of footpath 16 at A with a new terminal point slightly to the west at point C. The proposed terminal point at C satisfies the first part of this test as the link to the public road would be maintained. Convenience in relation to the new terminal point is not defined in the 1980 Act and a normal dictionary interpretation of that term should be applied.
19. The OSS submits that for anyone wishing to travel eastwards along footpath 16, the proposed terminal point at C is not as convenient as the terminal point at A as the diversion would duplicate the function of the western arm of footpath 16 and as it would result in users wishing to travel east having to dog-leg along the road to reach their original destination at A. The Council's submissions do not address this part of the statutory tests.
20. The proposed termination point at C would be on the same highway as A but approximately 80 metres further to the west. Point C would be approximately 35 metres to the east of the terminal point of the western arm of footpath 16. I consider that there is some merit in the submissions made by the OSS. Anyone approaching point B from the south along footpath 16 and wishing to travel onward to Berrington church or footpaths 1 and 2 will naturally seek to follow the eastern arm of footpath 16; those pedestrians wishing to access the centre of the village and footpath 14 will take the western arm.
21. I saw from my site visit that there was a clear wear line in the ground leading from B to A which suggests that this route forms a popular link leading towards Berrington church which would not be provided by the proposed diversion with a terminal point at C. For those wishing to travel east, the diversion to C will be less convenient as it would not serve the function of the existing footpath and would require pedestrians to walk along the public road or in the verge at the side of the road as there is no footway.
22. For these reasons, I am not satisfied that the proposed route would be substantially as convenient to the public using footpath 16 as the existing route.

Conclusions

23. I conclude that the order does not satisfy the tests set out in section 119 (1) and section 119 (2) (b) of the 1980 Act. Having arrived at this conclusion, I do not need to consider the Order against the remainder of the criteria set out in section 119 (6) of the 1980 Act.
24. Having regard to these and all other matters raised in the written representations, I conclude that the Order should not be confirmed.

Formal Decision

25. I do not confirm the Order.

Alan Beckett

Inspector

