



Order Decision

Site visit made on 11 November 2020

by Alan Beckett BA MSc MIPROW

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

Decision date: 02 December 2020

Order Ref: ROW/3243510

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Hampshire (New Forest District No. 5) (Parish of Fordingbridge – Footpath No. 68) Public Path Diversion and Definitive Map and Statement Modification Order 2019.
- The Order is dated 28 August 2019 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were two objections outstanding when Hampshire County Council (the Council) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. None of the parties requested an inquiry or hearing into the Order. I have therefore considered this case on the basis of the written representations forwarded to me. I made an unaccompanied inspection of the path at issue on Wednesday 11 November 2020.

The Main Issues

2. Section 119(6) of the 1980 Act requires that I must be satisfied that three separate tests are met before the Order can be confirmed. These are:

TEST 1: whether it is expedient in the interests of the landowner, occupier or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

TEST 2: whether the proposed diversion is substantially less convenient to the public.

TEST 3: whether it is expedient to confirm the Order having regard to the effect which— (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public right of way, and (c) any 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.

3. In deciding expediency at the Test 3 stage, (a)-(c) are mandatory factors. Other factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to

enjoyment of the land affected by the new path must be taken into account where applicable.

4. In reaching my decision I am also required to have regard to any material provision contained in a rights of way improvement plan (ROWIP) for the area. 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 (PSED) would be discharged by this proposal.
5. The Order has been made in the interests of the owner of the land crossed by footpath 68.

Reasons

6. *Whether it is expedient, in the interests of the owner of the land crossed by the footpath, that the footpath in question should be diverted*

7. The application to divert the footpath has been made to enable the owner of the land to create a paddock for his horses within the field through which footpath 68 runs without users of the footpath having to come into direct contact with the horses. The diversion was also requested to improve privacy at Mews Hill as diverting the path a little to the south would mean that users would no longer have direct views into the garden area of the property.
8. Both objectors submit that the landowner would have known of the existence of the path when the property was purchased and would have known that there was limited space for enclosed horse grazing. The objectors also note that the fencing erected within the field has progressively moved the available path away from the definitive line towards the southern boundary of the field.
9. Whilst the owner of the land may have been aware of the footpath when he made his purchase, this does not preclude him from subsequently applying for a diversion. I saw at my site visit that the field through which footpath 68 runs had been sub-divided by electrified horse tape which obstructed the definitive line of the footpath in four places. Notwithstanding the physical obstructions that were present at the time of my visit, I have considered the merits of this application as if these obstructions were not in place.
10. Diverting footpath 68 to a new line a little to the south of the existing route would enable the owner of the land to create a paddock or series of paddocks for his horses without the paddock or paddocks being bisected by a public right of way. I am satisfied that the segregation of the public from the owner's horses would be in his interests. The proposed alternative route would also take the public further away from the garden area of the house and would enhance the amenity of the property.
11. Overall, I am satisfied that the proposed diversion would be in the interests of the owner of the land crossed by footpath 68.

¹ Section 121 (3) of the 1980 Act

² Section 40 of the Natural Environment and Rural Communities Act 2006 - duty to have regard to the purpose of conserving biodiversity.

³ Section 11 of the Countryside Act 1968 duty to have regard to the desirability of conserving natural beauty and amenity of the countryside.

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

12. The terminal points of the diverted footpath (points A and B on the Order plan) will remain the same and the proposed path will maintain onward connectivity to the footpath which proceeds through the woods from point B towards Sandy Balls; there will be no loss of convenience in this respect. For those users undertaking a journey along footpath 68, the proposed diversion would require them to walk an additional 4 metres between points A and B via point C. I do not consider this additional distance would inconvenience users.
13. The ground traversed by the proposed path rises gently from the west at a reduced gradient compared with the existing definitive path and would offer a walking surface comparable to that of the existing route. Neither the gradient nor the surface of the proposed route is likely to inconvenience users of the path. The kissing gates which are present at points A and B will remain and users would not find the proposed route any less convenient in this respect.
14. Overall, I consider that the proposed footpath would not be substantially less convenient to the public.

Whether it is expedient to confirm the Order having regard to

(a) the effect the diversion would have on public enjoyment of the path as a whole

15. One matter raised in objection to the proposed diversion was that the views towards Fordingbridge available to the user from the mid-point of footpath 68 when heading downhill from B would be permanently altered. However, I noted at my site visit that the views westward towards Fordingbridge available when descending the slope were virtually identical between the current and proposed routes; this is unsurprising as the proposed alternative path is (at its maximum) only 15 metres from the current line. I consider that the proposed diversion would have limited, if any, adverse impact upon the extensive views of the surrounding countryside to the west which are currently available from the existing route.
16. On balance, I feel the enjoyment of those who seek pleasure from informal recreation on footpath 68 would not be diminished as a result of this Order.

(b) The effect the coming into operation of the Order would have with respect to the land served by the existing path

17. The proposed diversion would enable the creation within the field of a paddock which would not be crossed by a public right of way; this is likely to have a positive impact upon Mews Hill and the land held as part of that property.

(c) The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation

18. The land crossed by the proposed path is in the same ownership as the land crossed by the current line of footpath 68. No evidence has been submitted which suggests that the proposed diversion would have any negative impact upon the land over which the alternative path would run. The applicant for the diversion has entered into an undertaking with the Council to defray any compensation which may arise as a result of the proposed diversion.

Consideration given to the provisions of a ROWIP

19. The Hampshire Countryside Access Plan 2015 – 2025 draws broad strategic conclusions to identify improvements to the rights of way network within the area of the plan. The proposed diversion does not appear to conflict with the policies set out in the Council's ROWIP.

Consideration given to the needs of agriculture and forestry and the conservation of biodiversity and natural beauty

Agriculture and forestry

20. The land crossed by the proposed path forms part of the wider amenity land of Mews Hill and does not appear to be used for agriculture or forestry. Consequently, I consider it unlikely that there would be any negative impact upon agricultural or forestry operations arising from the proposed diversion.

Biodiversity

21. The land crossed by the proposed path is not classified as a Site of Special Scientific Interest and is not covered by any other local designations aimed at conserving habitat types or species diversity. There is no evidence before me that the proposed diversion would have any adverse impact upon biodiversity.

Natural beauty

22. The land crossed by the current and proposed path is located in an attractive rural setting on the western edge of the New Forest. The diversion of footpath 68 is unlikely to have any adverse impact upon the conservation of the natural beauty of the area.

Public Sector Equality Duty

23. The proposed path would run over land which rises gently from the west. There would be no gates or stiles for users to negotiate on the proposed route, although the existing kissing gates located at points A and B would remain. The increase in the overall length of the path by approximately 4 metres is unlikely to be an issue for current users of the path. Taking into account the lesser gradient of the proposed path, I consider there should be no disproportionality introduced to persons with protected characteristics (over and above the effects likely to be experienced by the rest of the population). I conclude that the PSED would be discharged by the proposal.

Conclusions on whether it is expedient to confirm the Order

24. For the reasons given above, I do not find that there would be any detrimental impact upon the enjoyment to be derived from a walk along the footpath at issue, and that there would be no adverse impact upon the land currently served by the footpaths or the land which the diverted path would cross. Consequently, there is no conflict between the outcomes of Test 3 and Tests 1 and 2. It follows that I consider that it would be expedient to confirm the Order.

Overall Conclusion

25. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

26. I confirm the Order.

Alan Beckett

Inspector

