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| **Order Decision** |
| Site visit made on 2 June 2021 |
| **by Martin Small BA(Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 15 July 2021** |

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| **Order Ref: ROW/3255100** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 (the Act) and is known as the Dorset Council (Parts of Footpaths 8 and 9, Wimborne Minster) Public Path Diversion and Stopping-up Order 2 2019. |
| * The Order is dated 4 November 2019 and proposes to divert and stop up the public rights of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the definitive map and statement for the area, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force. |
| * There were 66 objections outstanding when Dorset 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 in the Formal Decision.** |
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Procedural Matters

1. The effect of the Order would be to divert Public Footpath 8 from its current legal alignment to a new route a little way to the south and south-west and to stop up a short section of Public Footpath 9. Subsequent to the making of the Order, an amendment to the specification for the proposed diverted route between points K and L was approved, with the replacement of a proposed suspended boardwalk with an all-weather hoggin surface. The Order Making Authority (OMA) has therefore requested that if the Order is confirmed, it be modified to reflect this amendment.
2. At the time of my site visit it was possible to walk the section of Public Footpath 8 to be diverted but not the section of Footpath 9 to be stopped up as it has been temporarily diverted from the turning head on Victoria Place to its junction with Footpath 8 to allow the construction of an access road. However, although its route was not marked on the ground, I was able to clearly see its alignment from Footpath 8.
3. Also at the time of my site visit a new footpath between points J, K, L and C had been constructed as part of a riverside park. I was therefore able to walk this section of the proposed diverted route. Although I was unable to walk the section between points J, H, G, F, E and A due to ongoing construction works, I was able to view the alignment from both points J and A.
4. Seventeen persons requested an Accompanied Site Visit. However, during my site visit I was accompanied by 8 persons comprising 3 representatives of the OMA and applicant, 4 objectors and 1 supporter. I also subsequently walked the existing and proposed diverted routes again unaccompanied.

**The Main Issues**

1. The Order was made because it appeared to the Council that it was necessary to divert and stop up the Footpaths in question to allow development to be carried out in accordance with planning permission granted under Part III of the Act.
2. Section 257 of the Act requires that, before confirming the Order, I must be satisfied that it is necessary to divert and stop up the Footpaths to allow development to be carried out in accordance with the planning permission already given but not substantially complete.
3. Even if I were to find it necessary to stop up the paths to allow implementation of the permission my confirmation of the Order is discretionary. In exercising this discretion, I must consider the merits or disadvantages of the proposed diversion and stopping up in relation to the particular facts of the case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be extinguished by it.

Reasons

*Whether it is necessary to stop up the Footpaths to enable development to be carried out*

1. Planning permission for 203 dwellings and associated facilities (Planning ref: 3/16/0002/FUL) was granted in March 2019. The approved layout shows a number of proposed dwellings and garages on the existing lines of Footpath 8 between points A and C and of Footpath 9 between points B and D. In addition, the approved layout shows that the existing line of Footpath 8 would cut through the rear gardens of several of the proposed dwellings.
2. I am therefore satisfied that the approved development would encroach onto the existing lines of the Footpaths and that there is consequently a need to divert / stop up as shown on the Order map to enable the approved development to be carried out.

*Whether the development is substantially complete*

1. I saw on my site inspection that the construction of the approved development as a whole was underway. However, none of the properties that would affect the existing lines of the Footpaths had been constructed. Therefore, in terms of those works affecting the legal alignment of the Footpaths, I am satisfied that the development is not substantially complete.

*The effect of the Order on those whose rights would be extinguished by it*

Footpath 8

1. The section of Footpath 8 proposed to be diverted runs north-north-west from point A on the Order map north-west from Cuthbury Close and then turns north-west to point C. The sections of the Footpath points X – A and C – Y – Z would be retained. The path is 2 metres (m) wide with a lightly gravelled surface and no obstructions. It originally ran through allotments but these had been cleared at the time of my site inspection. The path affords views towards and over the River Stour to the countryside beyond, although the river itself only becomes clearly visible from points B - C. It therefore offers a reasonably pleasant walking experience.
2. The proposed diversion would run west-south-westerly from point A to point E along a proposed access road, then cross the main road into the site from Julians Road between points E and F and then turn west-north-westwards and north-westwards just beyond point F to points G, H and J. At point J, the path would turn northwards and north-north-westwards alongside the river before turning north-westwards just before point K to points L and C.
3. The proposed route would be 345 m, an increase in the distance between points A and C of 31 m. I do not consider this to be significant given the overall length of Footpath 8. The proposed alternative footpath would have a width of 2 m. It would be surfaced with tarmac between points A and E and between points F and G, block paving between points E and F, paving slabs between points G and H and all-weather hoggin between points H, J, K, L and C. It would provide a reasonably level path with a suitable walking surface and no obstacles.
4. Between points A and G the diverted route would run for 80 m along a residential road with a further 37 m along a shared pedestrian/vehicular route. However, this is practically the most direct route out of the urban realm from point A and the remainder of the route, the majority, would be away from vehicular traffic. A crossing of the main access road into the development would be necessary if the existing route was retained. I am therefore satisfied that the proposed route avoids estate roads where possible in accordance with Rights of Way Circular 1/09.
5. Notwithstanding concerns expressed by objectors to the Order that the proposed route would be subject to flooding, Drawing W466/69 Rev A shows that the proposed diverted route would lie outside the extent of the 1:100 year + climate change event. The area pointed out to me during my site inspection as being liable to flood is outside the line of the proposed diverted route, being to the south of the section between points G and J. The Environment Agency has not opposed the Order.
6. Although the proposed route would be closer to the river than the existing path, which may necessitate the keeping of dogs under closer control, I see no reason why the new route itself would present any greater danger than the existing Footpath. Whilst I have no evidence that the new route would have lighting, the existing Footpath 8 is unlit.

Footpath 9

1. Public Footpath 9 provides access from Victoria Road via Cuthbury Gardens and Victoria Place to Footpath 8 and thence to the river and Eye Bridge. The approved development layout shows that the Footpath would continue on its present alignment along an access road from Victoria Place into the estate to point D. However, if Footpath 8 was diverted, Footpath 9 would terminate at point B with no connection from there to the diverted route. It is therefore proposed to stop up 29 m of the Footpath between points D and B.
2. If this section of Footpath 9 is stopped up, accessing the river from point D would necessitate walking along the main access road into the estate either west-north-westerly to a cut-through between plots 100 and 101 leading directly to the diverted Footpath 8 or south-south-easterly to connect with the diverted Footpath at point E. Both options would be longer than the existing route but neither significantly so given the overall length of Footpath 9.

Findings

1. The diversion of Footpath 8 would result in a slight increase in the overall length of the route. However, the majority of the diverted route would be through a landscaped area, it would be surfaced appropriately for its entire length and would provide an additional stretch of attractive riverside walk without being unduly unsafe or inconvenient. The stopping up of a section of Footpath 9 would result in a longer route to the diverted Footpath 8 and the river, but this would not be significantly longer or less convenient. Accordingly, there would not be any significant disadvantage or loss to the general public as a result of the diversion and the stopping up. The Order would thus conform with the aims of the Rights of Way Improvement Plan.

**Other Matters**

1. The Order attracted 66 unresolved objections on a number of grounds, many relating to matters I have considered above. As regards temporary paths during construction works, the footpaths cannot be diverted or stopped up without due legal procedure and the Order provides that the diversion and stopping up shall have effect when the OMA is satisfied that an alternative highway has been provided. The diversion of the north-western section of Footpath 8 between points Y and Z does not form part of this Order.
2. The East Dorset District Council (EDDC) Masterplan Report Stage 2, Part 2 and Map 8.5 of the EDDC Adopted Core Strategy show a Greenway link from Footpath No.9 to the riverside recreational area. The Order does not include this link but this is not an opportunity to revisit the planning application. It is not within my power to modify the Order to secure such a link, as to do so would result in the planning permission being unable to be implemented in accordance with the approved plans. The Council has confirmed that the effect of the Order does not conflict in any way with the principles of its Adopted Core Strategy or with the Local Plan.
3. The effect of the riverside path on riparian wildlife would have been a matter considered by the local planning authority at the planning application stage. With the surfacing provided, I am not persuaded that the diversion would lead to greater erosion of the riverbank. Suggestions of possible impropriety, maladministration and misleading statements are for the Council to address. These are not matters to which I can ascribe any degree of weight when considering a Public Path Diversion Order under Section 257 of the Act.

Conclusion

1. Having regard to the above and all other matters raised in the written representations, I conclude that the Order should be confirmed with the modification described in paragraph 1 above.

**Formal Decision**

1. The Order is confirmed subject to the following modification:

* The wording ‘*and’* in line 8, ‘*and between*’ and ‘*and a suspended boardwalk surface with a handrail between points K (SU 00358 00043) and L (SU 00301 00065)*’ in Article 4 shall be deleted.

Martin Small INSPECTOR

