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| **Order Decision** |
| Inquiry opened on 28 September 2021 |
| **by Barney Grimshaw BA DPA MRTPI(Rtd)** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 07 October 2021** |

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| **Order Ref: ROW/3246728** |
| * This Order is made under Section 118B of the Highways Act 1980 (the 1980 Act) and is known as the City of Bradford Metropolitan District Council Public Footpath No.65 (Ilkley)(Part) between Sandholme Drive and Public Footpath No.65/65A (Ilkley), Burley Woodhead, Ilkley (Public Footpath (Extinguishment) Order) 2018. |
| * The Order is dated 21 August 2018 and proposes to extinguish the section of Public Footpath No.65 running through the grounds of Burley and Woodhead CE Primary School, as shown on the Order Map and described in the Order Schedule. |
| * There were 73 objections outstanding when the City of Bradford Metropolitan District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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Procedural Matters

1. I held an online public inquiry on Tuesday 28 and Wednesday 29 September 2021.
2. Although a large number of objections were made to the Order when it was advertised (73), no objector appeared at the inquiry. I nevertheless proceeded to hold the inquiry and took the opportunity to question witnesses who appeared in support of the Order regarding their evidence. In making my decision I have of course taken into account all of the evidence submitted both in writing and orally at the inquiry.
3. I made an unaccompanied site visit on Monday 27 September when I was able to view the Order route and an existing alternative route. It was agreed by parties at the inquiry that a further accompanied visit was unnecessary.
4. In writing this decision I have found it convenient to refer to points marked on the Order Map. I therefore attach a copy of this map.

The Main Issues

1. In this case, the requirements of Section 118B of the Highways Act 1980 (the 1980 Act) are as follows:

(1) that the footpath is a relevant highway which crosses land occupied for the purposes of a school;

(2) that it is expedient that the footpath should be stopped up for the purposes of protecting the pupils and staff from:

(i) violence or the threat of violence;

(ii) harassment;

(iii) alarm or distress arising from unlawful activity, or

(iv) any other risk to their health or safety arising from such activity

*(*3) that it is expedient to confirm the Order having regard to all the circumstances, and in particular to:

(i) any other measures that have been or could be taken for improving or maintaining the security of the school;

(ii) whether it is likely that the coming into operation of the Order will result in a substantial improvement in that security;

(iii) the availability of a reasonably convenient alternative route or, if no reasonably convenient alternative route is available, whether it would be reasonable to divert the footpath under Section 119B of the Act rather than stopping it up;

(iv) the effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.

Reasons

***Whether the footpath is a relevant highway which crosses land occupied for the purposes of a school***

1. The Order route is a public footpath recorded on the definitive map for the area and accordingly is a relevant highway.
2. The land crossed by the route forms part of the curtilage of Burley Woodhead CE Primary School (BWCEP) and is land occupied for the purposes of a school.

Whether it is expedient that the footpath should be stopped up for the purposes of protecting the pupils and staff

1. Although no incidents related to the presence of the Order route which involved physical violence being suffered by pupils or staff have been recorded, there have been a number which have caused significant concern. In a few cases, members of staff have experienced intimidation and/or verbal abuse when asking people who had left the public right of way and were on other parts of the school grounds to leave.
2. The footpath crosses the grounds of the school used by pupils at break times and during outdoor activities. At these times staff, parents and pupils themselves perceive that the presence of strangers using the path presents a potential danger. Since the occurrence of a few serious tragic incidents at school premises, the security of school buildings and outdoor spaces has received increased priority and been the subject of official advice to school managers. In particular, schools are advised to secure the perimeters of their sites and control access to them. At BWCEP the presence of the Order route makes this impossible.
3. Accordingly, in order to reduce risk as much as possible, additional staff are always on duty when children are present in the outdoor space and escort users of the footpath across the school grounds. They also carry radios to communicate with one another in the event of any perceived threat. In addition, regular ‘invacuation’ drills are held with pupils to practice rapid re-entry to the school buildings in the event of any perceived danger. These activities place an extra burden on staff and reduce the amount of other interaction they can have with pupils.
4. The need for additional staff presence also limits the amount of use that the school can make of its outdoor space for outdoor teaching and means that any spontaneous outdoor activity is not feasible.
5. Apart from the possible risk of serious violence which, although small, must be taken seriously by school staff, frequent other incidents also cause distress and potential harm to pupils and staff. Out of school hours, unauthorised access to the school premises is made by way of the footpath. I have seen records of around 100 incidents that have occurred between 2015 and 2019. These range from serious acts of vandalism and damage to school equipment to regular leaving of litter including broken glass, cigarette ends and items relating to illegal drug use, all of which pose a potential danger to young children and which school staff feel obliged to try and remove before children arrive on site. There is also a regular occurrence of dog fouling on the school field and, despite the efforts of staff, sometimes results in children coming into contact with dog faeces. At the inquiry, I heard from the parent of a 7 year old daughter who had returned from school having fallen on dog faeces on the school field the week before the inquiry causing her considerable distress.
6. Another source of particular distress for pupils arises when items they have themselves made at school or plants they have planted in the school garden are damaged, which has happened on a number of occasions. Also, pupils are encouraged to develop respect for their school premises and equipment and become upset when they see them damaged.
7. To try and alleviate these problems, the school has installed CCTV cameras and additional lighting and police patrols have been increased. I also note that the school caretaker lives on site and attempts to safeguard the premises. Nevertheless, problems continue to occur.
8. On the other hand, it is clear from the number of objections that the footpath is a popular and well-used facility. Many objectors seemed unaware of the problems perceived by school staff and questioned their extent. However, the evidence submitted in support of the Order was in my view well substantiated and leads me to conclude that it would be expedient for the footpath to be stopped up for the purposes of protecting pupils and staff.

***Whether it is expedient to confirm the Order***

*Other Measures*

1. I have referred above to measures the school has already taken to improve security. Consideration was given to whether fencing the path so as to separate it from the remainder of the school grounds would be feasible. However, as the path effectively bisects the school site this would cause serious consequential difficulties. Such fencing would reduce the space available to the school and would sever existing facilities such as the trim trail and running track. Provision would also have to be made for children to cross the path by means of lockable gates which would be difficult to supervise effectively.
2. Some objectors suggested that a reasonable compromise might be for the footpath to be closed during school hours but open at other times. However, there is no legal mechanism by which this could be done and, in any event, many of the problems experienced result from access to the school grounds out of school hours.
3. Overall, it would appear that the only practicable means of significantly improving the current situation would be the securing of the school perimeter which is not possible while the footpath remains in its present location.

*Improvement as a result of the Order*

1. If the Order is confirmed and the footpath extinguished, the school will be able to secure its perimeter and a budget has been set aside to cover the cost of fencing for this purpose. This would enable access to the site to be controlled, end the need for staff to escort walkers and make the school a safer place for pupils and staff. It would also facilitate increased and more effective use of the outdoor space for school activities.
2. Out of school hours, the securing of the perimeter would prevent unauthorised access to the site and put an end to the problems of vandalism, damage, dangerous litter and dog fouling.
3. Accordingly, the confirmation of the Order would lead to a substantial improvement in the security of the school and make it easier for security to be maintained.

*Availability of and Alternative Route*

1. An alternative route that is already available is an existing public footpath which starts at a point on Sandholme Drive approximately 150 metres to the south-east of Point A and runs generally northwards alongside Jumb Beck to Point B. A spur from this path links to Peasborough View. It would also be possible to walk between Points A and B along the footways alongside Sandholme Drive and Jumb Beck Close.
2. The distance between Points A and B by way of the shortest alternative route is a little over 150 metres longer than by way of the Order route and necessitates use of a roadside footway for some of the way. The road in question is a residential street subject to traffic calming measures. It is likely that the Order route is used primarily as part of a longer journey and that the additional distance to be covered if it is not available might add 2-3 minutes to the total journey time.
3. The alternative routes are all paved and lit by street lights whereas the Order route mainly crosses a grass field which can become muddy in wet weather. At present it seems that most, if not all, users walk through the school grounds along a paved path and, indeed, this was the route along which I was escorted on my visit. However, this is not the Order route. The gradients on the Order route and the beck side route are similar, that is mainly flat but with an incline up to Sandholme Drive.
4. Residents of the area that appeared at the inquiry stated that they found the beck side route pleasant to use and easier to negotiate than the Order route with a push chair.
5. The Ramblers Association, unusually regarding an extinguishment order, resolved at both local and national level not to object to the Order. A representative gave evidence at the inquiry and stated that although public rights of way are important and precious, the safeguarding of children is also crucially important. In this case, he was satisfied that the alternative route that is available is suitable and easily accessible, otherwise he would not have consented to appear at the inquiry as a witness for the Order Making Authority.
6. Some objectors referred to incidents in the past of people falling and being injured when using the beck side route. When notified of this, the Council took steps to ensure that the route was not slippery by jet washing, surface dressing and reminding neighbouring owners of their responsibility to prevent vegetation from growing over the path. Users of this path who appeared at the inquiry stated that they had never encountered any problem and on my visit I perceived no potential danger to users of this path.
7. Overall, it is my view that the there is a reasonably convenient alternative route available by way of the footway to Sandholme Drive and the beck side footpath. Nevertheless, as several objectors referred to the desirability of diverting the Order route rather than extinguishing it, I have also considered this possibility. Possible diversions would re-route the path around the edge of the school site where it could be fenced off from the remainder of it. This might reduce or eliminate many of the problems for the school such as littering, vandalism and the need for staff to escort walkers. However, such a solution would incur considerable costs for additional fencing and the re-siting of school facilities such as the trim trail. It would also reduce the outdoor space available for school use which is already limited relative to the number of pupils. In addition, the resultant fenced corridor would be a less pleasant route than either the existing path or the alternative that is already available, it would also be longer than the Order route and closer in length to the alternative. In the light of these factors and my conclusion that the alternative route that is already available is reasonably convenient, there would be little merit in pursuing further the suggestion of diverting the path within the school grounds.

*Effect on other land served by the footpath*

1. No evidence was adduced to suggest that the extinguishment of the Order route would have any adverse effect on land served by it and I have no reason to believe that any such effect would result.

**Other Matters**

1. Some people objected on the grounds that they wished to have continued access to the school grounds in general so that the wider community could benefit from the use of school facilities, some of which had been partly funded by the community. However, the presence of the footpath conveys no right of access to adjoining land and, as I have already described, such unauthorised access has resulted in multiple problems experienced at the school. At the inquiry it was stated on behalf of the school that, if access could be properly managed and controlled, it might well be possible for arrangements to be made for use of school facilities by community groups outside school hours in the same way that the school hall is already let for use by outside organisations on occasion.
2. Some objectors also expressed concern that closure of the footpath might result in traffic problems on Sandholme Drive when children were arriving at or leaving the school. However, this fear appears to be unfounded as access to the school for pupils by way of the path is not intended to be altered in any way as a result of it ceasing to be a public right of way.

Conclusions

1. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

Barney Grimshaw

**Inspector**

appearances

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| **For the OMA** |  |
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| Piers Riley-Smith | Counsel representing Bradford Metropolitan District Council (BMDC) |
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| Who called: |  |
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| Mark Selby | Mental health and Wellbeing Governor, Burley and Woodhead CE Primary School (BWCEP) |
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| Jo Siddall | Headteacher, BWCEP |
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| Fiona Parker | Clerk to Governors, BWCEP |
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| Victoria Lister | School Business Manager, BWCEP |
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| Andrew Wilkinson | Deputy Headteacher, BWCEP |
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| Natasha Brodaty | Teacher, BWCEP |
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| Richards Smith | Ramblers |
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| Jayne Benson | Strategic Routes Officer, BMDC |
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| **Supporters** |  |
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| Stuart Nichols | Parent, BWCEP |
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| Sarah Bruce | Parent, BWCEP |
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| Sarah O’Mahoney | Parent, BWCEP |
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**DOCUMENTS**

1. Bundle of documents compiled by BMDC.

2. Statement and Proof of Evidence of Jayne Benson, BMDC.

3. Proof of Evidence of Fiona Parker and Email dated 11/3/21 attaching a copy of Student Survey December 2020.

4. Proof of Evidence of Joanne Siddall.

5. Statement of Mark Selby.

6. Statement of Victoria Lister.

7. Statement of Andrew Wilkinson.

8. Statement of Natasha Brodaty.

9. Proof of Evidence of Richard Smith.

10. Statement on behalf of 6 members of staff of BWCEP.

11. Letters of support for the Order from Helen and Matthew Lear, Jonathan Siddall, Dr Sophie Lamb.

12. Representations from Sarah and Karl Thompson, Colin Speakman, Clive Barton, Charles Billington, E Moody and anonymous.

