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| **Order Decision** |
| Site visit made on 7 December 2021 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs** |
| **Decision date: 14 January 2022** |
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| **Order Ref: ROW/3273966** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Selby District Council Footpath 35.18/6/1 Land off Low Street, Carlton Diversion Order 2020.
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| * The Order is dated 16 July 2020 and proposes to divert the public right of way shown on the Order Map and described in the Order Schedule.
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| * There were two objections outstanding when Selby District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.
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| **Summary of Decision: The Order is confirmed.** |
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**Background**

1. Footpath 35.18/6/1 presently commences at its southern end adjacent to the gable of a dwelling house at number 11 Park View, Carlton. From there it proceeds in a northerly direction following the carriageways and footways of Park View and Fairfield Avenue before turning west to follow the shared surface carriageway of Fieldside. Near the end of the cul-de-sac, it passes through a cut between numbers 14 and 16 Fieldside to Point A shown on the Order Map. From Point A, it runs north west across the corner of a field for approximately 100 metres and meets an unmade track that joins Low Street at Point B on the Order Map. From Point B the footpath runs in a generally northerly direction before crossing a railway line to proceed towards, and across, part of Claypit Lane before bearing north west and terminating in a field at the boundary with Camblesforth Parish.
2. Outline planning permission was granted on 26 November 2015 (Reference: 2014/1129/OUT) for a residential development of up to 66 dwellings together with associated infrastructure and open space provision on land west of Station Road, Carlton. Subsequently, reserved matters approval was granted on
24 May 2019 for the erection of 66 dwellings on the same site (Reference: 2018/0871/REMM). I have no evidence that would indicate that the relevant conditions attached to the planning permission have not been discharged. Part of the definitive line of Footpath 35.18/6/1 runs through the site of this permitted residential development.
3. At the time of the site visit the development was in progress with groundworks underway for part of the site and the base course for some of the estate road was in place. The current definitive line of the footpath was excluded from the area under development and separated from it by a rigid weldmesh security fence.
4. It is proposed to divert the line of the footpath between Point A and Point B on the Order Map to run in a westerly direction for approximately 51 metres parallel to the boundary of a property known as The Villa to Point C on the Order Map before bearing north west for approximately 10 metres to Point D on the Order Map. From here the new route would run parallel to the carriageway of Low Street for approximately 53 metres to join the unmade track at Point B on the Map. The new path would have a hoggin (self-bonding aggregate) surface and a width of 2 metres for its whole length. The existing definitive line of the footpath between Points A and B would be stopped up as a result of the Order.

**The Main Issues**

1. Section 257(1) of the Town and Country Planning Act 1990 (the Act) provides for an Order to be made authorising the stopping up, or diversion, of a footpath if it is necessary to do so in order to enable development to be carried out in accordance with planning permission already granted under Part III of the same Act.
2. Paragraph 7.15 of DEFRA Circular 1/09 (version 2 of October 2009) advises that in considering whether or not to confirm the Order, the disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way, should be weighed against the advantages of the proposed Order.
3. Paragraph 7.15 of the Circular also makes it clear that, in considering an Order of this kind, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure or diversion of a footpath that confirmation of the ensuing Order will automatically follow.

Reasons

*Whether the diversion of the footpath is necessary to allow the development to be carried out*

1. It is evident from the documents submitted, including the Site Layout Plan drawing for the reserved matters approval (Harron Homes Drawing number 470-001 Revision Q), that the new properties on Plots 59 and 60 of the development would be built over the current definitive line of Footpath 35.18/6/1. The present line of the footpath would also pass through the proposed curtilage and garden areas of the proposed dwellings on plots 45, 58, and 61 in addition to crossing two internal site access roads serving the new dwellings on Plots 45 to 47 and Plots 57-61.
2. No building work on the properties on these plots had commenced at the time of my site visit. However, it was apparent from the site visit that if the development is to be implemented in accordance with the terms of the planning permission, the present definitive line of the footpath would be obstructed.
3. Consequently, I find that the diversion of the footpath is necessary to allow the development to be carried out.

*The extent of* *inconvenience or loss likely to arise as a result of the diversion of the right of way to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way*

1. The proposed new route of the footpath would be approximately 14 metres longer than its present line. I observed when I visited the site that the present definitive line of the footpath where it crosses the development site was only faintly discernible as a narrow beaten path through long grass and tall ruderal vegetation. There were no readily observable signs that the present line between Point A and Point B is regularly or heavily used. In contrast, I saw that currently there is a heavily worn desire line running westwards, parallel to the northern boundary of The Villa, from the point where the cut emerges from between the houses on Fieldside to the carriageway of Low Street. This desire line broadly follows the same line as the section of the proposed diversion between Points A and C as shown on the Order Map.
2. The current defined width of the footpath is 0.9 metres and on the section between Points A and B on the Order Map is unsurfaced, consisting of compacted soil with a thin covering of grass. The new diverted route would have a width of 2 metres for its entire length and would have a properly consolidated surface.
3. From my observations during the site visit, it was apparent that the westward section of the proposed new route is currently preferable to users rather than the definitive route, despite the latter still being available for use.
4. In this context, the proposed new line of this section of the footpath would not be noticeably less convenient for users than the current definitive route and would have a better and more commodious walking surface than the present route.
5. There are no properties that are directly accessed from the section of the footpath that is to be diverted.
6. The proposed diversion of the footpath would move the route closer to the property known as The Villa than the current route. The boundary of this property is formed by a timber fence approximately 1.8 metres high for most of the length of the diverted route. I noted that there are several window openings in the elevation of this house facing the footpath and that there is also a French window in this elevation at ground floor level. I have also noted that the occupier of the house has objected to the order on, among other matters, the grounds that the proposed diversion would create opportunities for vandalism and anti-social behaviour through the creation of an unsupervised and unlit route. The objector also suggests that the diversion should be routed though the new estate utilising the footways within it.
7. There is no substantive evidence before me in respect of the current level of usage of the footpath. However, I have no reason to believe that normal recreational use of the footpath as diverted would be substantially different from its current use or that it would result in a greater degree of disturbance to, or causal overlooking of, The Villa than the present definitive route.
8. Whilst the new route of the footpath would not be lit, I observed that the section of the footpath that is to be diverted is not presently lit either. I would also concur with the point made by both the Order Making Authority and the developer of the new estate that the new dwellings on Plots 45-47 and 57-61 would provide a degree of passive surveillance to the new footpath. Consequently, I do not find the argument that the proposed diversion would result in an increase in anti-social behaviour a compelling one.
9. Whilst the objector has suggested that the diversion could follow an alternative route through the development that was promoted in an earlier iteration of the proposal by a different developer, I have no power to amend the planning permission that has been granted and cannot consider the planning merits of the approved scheme.
10. I therefore find that there would not be any significant inconvenience or loss to members of the public or to persons whose properties adjoin, or are near, the existing public right of way, which would arise as a result of the diversion of the right of way.

**Other Matters**

1. It is suggested by one of the objectors that a historical display board of the original route, a bench seat, and a litter bin should be provided as part of the diversion. The proposed diversion relates to only a short length of the footpath and although the path may be long established, there is no substantiated evidence that it has any historic significance. It is not stated in the objection why a bench seat would be necessary to mitigate or overcome any inconvenience or loss to the public as a result of the diversion, and there is no public seating which would be lost on the current definitive route. I have noted that the developer has agreed to provide a litter bin on the new route that would be managed by the estate management company. Whilst this would represent a small scale improvement over the current situation, the decision does not turn on this point.
2. The objections received also refer to a proposed emergency access route. However, because this relates to the planning permission, as set out above, it is not a matter that I can consider.

**Conclusions**

1. For the above reasons, I conclude that the Order should be confirmed.

Formal Decision

1. I confirm the Order.

John Dowsett

INSPECTOR

