PINS Logo

|  |
| --- |
| **Order Decision** |
| Site visit made on 1 February 2022 |
| **by Martin Small BA (Hons) BPl DipCM MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 16 February 2022** |

|  |
| --- |
| **Order Ref: ROW/3275950** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 (the Act) and is known as the South Hams District Council (Footpath No 2 Kingsbridge) Public Path Diversion (No 2) Order 2020. |
| * The Order is dated 6 November 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when South Hams 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.** |
|  |

Procedural Matters

1. The effect of the Order would be to divert part of Public Footpath No 2 from its current legal alignment to a new route broadly to the north. At the time of my site visit it was not possible to walk the proposed diverted route but I was able to view its alignment from the existing footpath.
2. Outline planning permission for the erection of up to 60no. dwellings, 0.5 hectares of employment land, 2no. vehicular accesses, open space, play provision and drainage was granted in July 2015. All matters were reserved for future approval other than two access points off West Alvington Hill at either end of the site. Reserved matters, other than for the employment land element, were approved in September 2020.
3. The Objector contends that the outline permission is not valid because of an alleged failure to disclose or correctly notify the owner of the land to the south of the site that includes Footpath No 2 which would be crossed by the proposed accesses. The Objector also questions the validity of a Certificate of Lawfulness for the implementation of the outline permission. However, I have no evidence that either the permission or the Certificate have been successfully legally challenged. I am therefore satisfied that the permission is both valid and extant.

The Main Issues

1. The Order was made because it appeared to the Council that it was necessary to divert the footpath 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 the footpath 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 divert the footpath 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 in relation to the particular facts of this case, and in particular the effect the confirmed Order would have on those entitled to the rights that would be affected by it.

Reasons

*Whether it is necessary to divert the Footpath to enable development to be carried out*

1. Footpath No 2 runs along the entirety of the southern boundary of the development site in a broadly east-west alignment. Where the approved western access to the site would cross the footpath, the path runs at a higher level than West Alvington Hill. Retaining the current legal alignment of Footpath No 2 over the approved access road would result in a crossing point very close to the junction with West Alvington Hill. Furthermore, because of the lower level of the access road, steps would be required between the footpath and the access road.
2. The proposed diverted route would follow a sinuous path either side of the approved access road northwards as shown on the Order Map. This would provide both a manageable gradient without the need for steps and a safer crossing point further from the junction with West Alvington Hill.
3. I am therefore satisfied that, having regard to the safety and convenience of the users of the footpath, the proposed diversion of Footpath No 2 is necessary to enable the approved development to be carried out.

*Whether the development is substantially complete*

1. At the time of my site visit the approved development had commenced but no houses nor the western access road had been constructed. The development is therefore not substantially complete.

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

1. From its eastern start point Footpath No 2 runs along a footway adjacent to West Alvington Hill for approximately 110 metres. Beyond Norden Lane the footpath runs on an elevated line accessed by steps for the remainder of the approximate 240 metres of the path. Between the top of the steps and a kink in the footpath just to the west of Point A on the Order Map the path is separated from West Alvington Hill by a hedge and from the approved development site by a post and rail fence. From this section of the footpath there are attractive views over part of the development site, Kingsbridge and beyond, including of the South Devon Area of Outstanding Natural Beauty, as the land falls to the north and east.
2. There are no parties who own land directly adjoining the Order route who would suffer any loss or disadvantage as a result of the diversion. Therefore the only rights that would be affected by the Order would be those of the public using the footpath.
3. The proposed diversion would add approximately 19 - 20 metres to the length of Footpath No 2. Relative to the length of the footpath as a whole, this additional distance would not be significant. The diversion would only affect a short section of the footpath relative to the length of the path from which the attractive views can be experienced and not deviate greatly from the existing alignment. Consequently, any loss of the view due to the diverted route crossing the lower level of the access road would be limited and affect only a small part of Footpath No 2.
4. The proposed crossing of the access road would be safer for users than a crossing on the current legal alignment. The gradient of the diverted path would be more easily accessible, particularly for those less ambulant or with young children. The diverted route would be surfaced in asphalt as is the existing footpath and public open space would provide it with a pleasant setting.
5. Accordingly, there would not be any significant disadvantage or loss to the public, including tourists, as a result of the diversion.

**Other Matters**

1. The Objector’s concerns include the siting and length of the approved access road and the extent of the development site relative to the allocation in the adopted development plan. Further concerns include the loss of views due to the introduction of built development and tree planting along the approved access road and the introduction of a new highway crossing.
2. However, these are consequences of the approved development rather than of the proposed diversion. The diversion of and views from the footpath and highway safety were matters considered during the determination of the planning applications, with the proposals being revised to retain more of the views from Footpath No 2. The Objector’s concerns over the handling of the planning applications relate to the consideration and processing of those applications rather than to the Order.
3. Even if the approved access could have been located in an alternative position as the Objector suggests, I have no power to amend the planning permission and the Order is not an opportunity to revisit the planning applications. The allegations that the applicant intends to seek further development and the timing of the application for the diversion relative to the dates of approval of the planning applications are not relevant considerations when considering a Public Path Diversion Order under Section 257 of the Act.
4. None of these concerns are therefore matters to which I can ascribe any degree of weight in my decision.

Conclusion

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

**Formal Decision**

1. I confirm the Order.

Martin Small

INSPECTOR

