LOGO

|  |
| --- |
| **Order Decision** |
| Inquiry Held on 7 June 2022  Site visit made on 6 June 2022 |
| **by Alan Beckett BA MSc MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 29 June 2022** |

|  |
| --- |
| **Order Ref: ROW/3262491** |
| * 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.7 (Parish of Breamore – Part of Footpath No.17) Public Path Diversion and Definitive Map and Statement Modification Order 2020. |
| * The Order is dated 29 January 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were 19 objections outstanding at the commencement of the inquiry. Five representations in support of the proposed diversion were also made in response to public notice of the making of the Order. |
| **Summary of Decision: The Order is confirmed.** |
|  |

###### Procedural Matters

1. I held an inquiry into the Order at Hulse Hall, Breamore on Tuesday 7 June 2022 having made an unaccompanied inspection of the Order route the previous evening. I was not required to make a further accompanied inspection following the close of the inquiry.
2. None of the statutory objectors attended the inquiry in person, nor were they represented at the inquiry. I therefore heard the case for the confirmation of the Order put by both Hampshire County Council (‘the Council’) and by Mrs Bolt (‘the Applicant’). I also heard from 5 members of the public who spoke in support of the confirmation of the Order. At the inquiry, the case for the confirmation of the Order was put on behalf of the Council by Miss Lean, with the Applicant being represented by Mr Wilmshurst. I am grateful to all parties for the helpful and courteous way in which they endeavoured to assist me in the course of the inquiry.

The Main Issues

1. 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 the diversion is expedient in the interests of the owner, lessee or occupier of land crossed by the path or of the public. 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 would not be 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.

1. 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.
2. 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. I must also consider whether the Public Sector Equality Duty (PSED) would be discharged by this proposal.
3. The Order has been made in the interests of the owner of the land crossed by that part of footpath 17 at issue.

Reasons

***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***

1. The definitive line of footpath 17 leaves Flood Street at the entrance to the Applicant’s property and runs in a generally easterly direction over land used as the access driveway and yard of Flood Street Farm. The Applicant’s house stands to the south of the footpath with a range of outbuildings being to the north; footpath 17 passes the house around 3 metres from the ground floor kitchen window.
2. The Applicant spoke of her concerns regarding the safety and security of her young family as a result of incidents of inappropriate use of the footpath by a number of unnamed and unidentified individuals. The applicant spoke of intrusive incidents of people acting suspiciously in and around the outbuildings, looking in to the house through the kitchen window or looking into the garden. It is considered that some of this type of activity has been undertaken with ulterior motives, given the isolated position of the property, and there has been a number of incidents of theft from the yard and outbuildings.
3. Photographic evidence was submitted of persons straying off the line of the footpath to investigate the family’s parked cars or the outbuildings and to take photographs of the property. The Applicant has two young children, and those incidents described to me have given rise to concerns about the children’s safety and their ability to play in and utilise the space between the house and its outbuildings.
4. I saw from my site visit the proximity of the house and the ground floor windows to the footpath. Those path users who legitimately use the footpath to pass and re-pass between Flood Street and Charnwood Road are unlikely to cause the Applicant alarm and distress, although I can understand that it may be unnerving to have path users pass so close to the house at dusk or during the hours of darkness.
5. However, it is those who seemingly use the existence of the footpath as a pretext to engage in other activities within the property which gives rise to concerns about safety and security. The Applicant provided details of a number of incidents which had been reported to the police, and whilst the diversion of the footpath may not deter those who are intent on criminal activity, the Applicant would be able to make a stronger challenge to the presence of third parties if the footpath did not run between the house and the outbuildings.
6. In addition, if the footpath were diverted as proposed, both the front and rear access to the property (at points A and B) could be secured by fencing or locked gates; this is not currently possible as access for the public has to be maintained.
7. One of the grounds of objection to the proposed diversion was that the Applicant would have known of the existence of the footpath when purchasing the property and if they were unhappy about it, they were unwise to proceed with the purchase. This argument was rejected by Ouseley J, in *Ramblers Association v Secretary of State for the Environment, Food and Rural Affairs* [2012] EWHC 3333 (Admin); the Applicant’s awareness of the existence of the footpath at the time she purchased her property is irrelevant to the question of whether it would be in her interests for the footpath to be diverted.
8. I consider that the proposed diversion would be in the interests of the Applicant. As a result of the diversion, footpath 17 would no longer run within a few metres of the windows of the house and would enhance the amenity of the space between the house and the outbuildings opposite. Furthermore, the diversion would also be in the Applicant’s interests as a means of enhancing the security of her property.
9. For these reasons, I am satisfied that it is expedient in the interests of the landowner that part of footpath 17 should be diverted.

***Whether the terminal point of the proposed footpath would be substantially as convenient to the public as the terminal point of the existing footpath***

1. One of the grounds of objection was that sight lines along Flood Street from point E were not as extensive as those available from point A. Whilst a user standing in the road at point E would have a reduced view of traffic approaching from the south beyond Flood Street Farm, I found that the footbridge provided a suitable refuge at which to stop, look and listen before determining whether it was safe to step out and continue my journey along the road. I also found that it was possible to see along the road south of the farm to determine whether there was traffic approaching from that direction.
2. Furthermore, although Flood Street is not subject to a speed restriction and vehicles could legitimately travel at up to 60mph, the characteristics of the road are such that traffic speeds are likely to be much lower. Flood Street is essentially single track with passing places limited to field entrances or the access drives to the small number of properties served by it. If the road conditions I experienced at the time of my site visit in the evening rush hour are representative of the usual pattern of use, it would appear that Flood Street is lightly trafficked.
3. I conclude that the proposed terminal point at E will be substantially as convenient to the public as the current terminal point at A.

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

1. The section of footpath 17 proposed for diversion is approximately 123m in length whereas the proposed replacement would be approximately 115m. The proposed alternative route would maintain a means of travel between Flood Street and Charnwood Road. The evidence before me suggest that the principal use of the path is for recreational, as opposed to utilitarian purposes; the majority of users are unlikely to be inconvenienced by the slight reduction in the overall length of footpath 17 that would arise from the diversion.
2. The proposed diversion would result in the western terminal point of footpath 17 being relocated to a point on Flood Street approximately 30 metres to the north of its current location. As noted by Mr Roberts in his evidence, for those wishing to travel along footpath 17 from footpath 16, the proposed alternative would be more convenient in that the extent of road walking along Flood Street would be reduced.
3. Conversely, the proposed diversion would require anyone approaching from the south to walk an additional 30 metres along Flood Street. This additional distance is unlikely to inconvenience users however, as they are currently required to walk approximately 2.16Km along Fryern Court Road and Flood Street to reach footpath 17 as there are no other public rights of way between Flood Street Farm and Lower Burgate.
4. Concerns were raised by the objectors with regard to the infrastructure which the proposed route had initially been provided with. At the time the objections were made, there were stiles present at E and D and the footbridge over the drain at Flood Street was narrow with only a hand rail on the north side. The Applicant has responded to these criticisms by replacing the stiles with pedestrian gates and by re-designing the footbridge so that it is now a wider structure, with anti-slip mesh on the decking and handrails on either side.
5. Although users of the proposed alternative would be required to pass through pedestrian gates (at points E and D), the gates are the least restrictive option which ensures that livestock in the adjacent paddocks does not have direct access to the road. Those who spoke in support of the Order made no adverse comment with regard to the pedestrian gates or the footbridge which had been provided, and I consider that users of the path are unlikely to be inconvenienced by the infrastructure on the proposed route.
6. I note that, if confirmed, the Order would only become operative once the Council certifies that the alternative route has been brought into a fit condition for use by the public. I also note the Applicant’s willingness to undertake any further works which the Council may require in this regard. I consider that such undertakings should allay any concerns the objectors may have with regard to the suitability of the proposed alternative path for public use.
7. I saw that the proposed path had been set out at a uniform width of 2.5 metres between stock proof fences; the available width is unlikely to inconvenience those who seek to use it.
8. The objectors contended that at those times when Flood Street was flooded the proposed alternative route would be difficult to access as the road at point E would be flooded. Furthermore, that at such times the alternative route was likely to be inundated whereas the current route was not prone to flooding; however, this was not the state of affairs reflected in the photographs submitted by the Applicant. Furthermore, Mr Roberts’ evidence, for example, was that the proposed route had remained dry in 2021 when Flood Street was under water.
9. The photographs dated 17 January 2020 show the path between the buildings as being wet beyond the gravelled parking area whereas the alternative footpath was dry due to it crossing land which is slightly elevated. Whilst there was evidence of land between the proposed footpath and the outbuildings being flooded, the extent of the flooding corresponds with that shown on the flood risk overlay plan. This plan shows that predicted flooding along Flood Street would cover parts of the existing route, but that the proposed alternative would be unaffected.
10. The flood risk plan also shows that Flood Street at both points A and E would be inundated, and this is reflected in other photographs. The applicant also submitted photographs showing that the depth of the water at point E (9.0cm) was slightly lower than at point A (9.5cm). The evidence demonstrates that the proposed alternative path would remain available for use during flood events, although access to the footpath from Flood Street at such times would have to be undertaken with care.
11. The evidence before me does not lead me to conclude that users would find the proposed footpath inconvenient during flood events.
12. Concerns were also raised with regard to the risk path users may be exposed to in encountering agricultural vehicle movements between points D and C. Whilst there may be some vehicular activity between these points, those using the current path do so in the knowledge that the path crosses the vehicular access to the house and to the Applicant’s other land. Those using the current path will therefore be aware of the likelihood of encountering vehicles when walking along parts of footpath 17. In the light of this, I do not consider that joint use of the proposed route D – C would inconvenience users of the path.
13. For the above reasons, I conclude that the proposed diversion would not be substantially less convenient to the public.

###### *Whether it is expedient to confirm the Order having regard to*

###### *the effect the diversion would have on public enjoyment of the path as a whole*

1. Although the current route runs over the access to Flood Street Farm, it retains by and large, the character of a rural path where it passes along the edge of agricultural fields to the north of point B. Despite the proposed path being enclosed between fences, the rural nature of the path is reflected in the proposed route which passes over land used for the keeping and rearing of rare breed animals. For those walkers who feel uncomfortable with walking close to the downstairs windows of residential property the proposed route is likely to give greater enjoyment than the current route.
2. This was the impression I received from those members of the public who spoke at the inquiry. Ms Holme spoke of feeling embarrassed to walk so close to the Applicant’s house; Mr Chester-Sterne said that the proposed alternative was ‘a much nicer path to walk’; Mrs Plumridge found the rare breed animals which can be seen from the alternative path to be ‘enchanting’ and considered the proposed path to be ‘something special’.
3. The views to be had of the surrounding countryside are similar to those from the current route. The views northward from the proposed route are more extensive than those currently available as they are not limited by the outbuildings. A view of the farmhouse and the brick and flint outbuildings will remain available from the proposed route, albeit at a 30m distance. Those users who derive enjoyment from seeing old buildings within the landscape are unlikely to be adversely affected by the proposed diversion.
4. On balance, I feel the enjoyment of those who seek pleasure from informal recreation on footpaths such as this would not be diminished as a result of this Order.
5. *The effect the coming into operation of the Order would have with respect to the land served by the existing path*
6. The diversion of the footpath would have a positive impact upon the Applicant’s ability to manage and enjoy the land between the house and the outbuildings without having to have regard to public access.
7. I conclude that it is unlikely that the diversion would give rise to any adverse impact upon the land served by the existing path.

*(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*

1. The freehold owner of the land crossed by the proposed path has consented to the diversion. No evidence has been submitted from which it could be concluded that the diversion would have an adverse impact upon the land crossed by the new path. Compensation issues are therefore not relevant.

***Conclusions on whether it is expedient to confirm the Order***

1. 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 footpath 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 conclude that it would be expedient to confirm the Order.

***Consideration given to the provisions of a ROWIP***

1. The Council has prepared a ROWIP; I understand that there are no provisions within that plan of particular relevance to this case.

**PSED**

1. As noted above, users will have to negotiate a sleeper footbridge and two pedestrian gates as a result of the diversion. Pedestrian gates are the least restrictive boundary structures given the need for livestock management. I conclude that there should be no disproportionality (over and above that likely to be experienced by the rest of the population) introduced by the proposed diversion.

**Overall** **Conclusion**

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

Formal Decision

1. I confirm the Order.

Alan Beckett

Inspector

APPEARANCES

For Hampshire County Council:

Jacqueline Lean of Counsel, instructed by Hampshire County Council Legal Services

who called:

Tara Pothecary Countryside Access Development Officer

For the applicant:

Paul Wilmshurst of Counsel, instructed by Thrings LLP

Who called:

Abigail Bolt

Interested parties in support:

Chris Chester-Sterne

Dan Wiggins

Catherine Holme

Davina Plumridge

Martin Roberts

Inquiry documents

1. Opening statement on behalf of Hampshire County Council
2. Closing statement on behalf of Hampshire County Council
3. Bundle of photographs dated 17 January 2020.

Order plan

ORDER MAP SHOWING ROUTES
