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| **Order Decision** |
| Site visit made on 31 May 2022 |
| **by J J Evans BA (Hons) MA MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 03 August 2022** |

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| **Order Ref: ROW/3281956** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the South Gloucestershire Council (Footpath LSG 19 at Harry Stoke South, Stoke Gifford) Public Path Diversion and Definitive Map and Statement Modification Order 2020.
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| * The Order is dated 22 July 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
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| * There were 2 objections outstanding when South Gloucestershire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs.

**Summary of Decision: The Order is confirmed.** |
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Decision

1. The Order is confirmed.

**Procedural Matters**

1. During my site inspection, reference was made to a drawing that was part of the negotiations concerning a highways agreement (ie drawing 3187.04C). As the local residents who attended the inspection had not seen this drawing, a copy was subsequently provided for them to comment upon. I have had regard to those comments made in my consideration of the Order.

Main Issues

1. The Order was made because it appeared to the Council that it was necessary to divert footpath LSG 19 to enable development to be carried out in accordance with planning permission granted under the Town and Country Planning Act 1990 (the Act).
2. Section 257 of the Act requires that I must consider whether it is necessary to divert that part of the footpath at issue to allow development to be carried out in accordance with the planning permission already given.
3. In addition, consideration should also be given to any disadvantages or loss likely to arise as a result of the diversion, either to members of the public generally, or to persons whose properties adjoin or are near to the existing footpath.
4. The Order also allows for modification of the Definitive Map and Statement by reference to Section 53A(2) of the Wildlife and Countryside Act 1981.

Reasons

***Whether planning permission in respect of the development has been granted***

1. Planning permission for the development of the land to the east of Harry Stoke Road was granted outline approval at appeal under the application referenced PT06/1001/O, with subsequent approval of reserved matters granted under PT17/5810/RM. The planning permission allowed for the erection of 763 dwellings, community building, nursery, and retail units, with parking, landscaping and associated works. On the basis of the evidence provided, planning permission exists for the development.

***Whether the diversion of the footpath is necessary in order to allow development to be carried out in accordance with the planning permission already granted***

1. Development was underway at the time of my site inspection, with the footpath no longer available for public use due to the presence of security fencing. Near the line of the existing footpath development is currently mostly occurring towards the northern end of the route. The development is in its initial stages, with houses being erected over parts of the line and some groundworks having been commenced. At the time of my site inspection the development was not substantially complete, albeit in due course the original line of the path would be obstructed by houses, thereby rendering it unusable. Consequently, the diversion of the footpath would be necessary to enable the development to be carried out.

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

*Impact upon members of the public*

1. The proposed route would utilise the existing start point (Point A). Instead of proceeding in a south-easterly direction, the proposed route would run roughly parallel to Harry Stoke Road, diverging away from it near Point C before linking onto Harry Stoke Road (Point D). The retention of Point A would maintain connectivity of the proposed route with Harry Stoke Road and the nearby footpath (footpath LSG 20). Given this, pedestrian access to nearby facilities and destinations, including Bristol Parkway railway station would be maintained.
2. Via Point B the existing route would provide a link onto Harry Stoke Road, near to Filton Road and footpath LSG 30. The proposed route would maintain connectivity with Harry Stoke Road and Filton Road via Point D, with pedestrians still being able to access nearby facilities and services, including the university campus. Connecting with footpath LSG 30 would necessitate having to walk along Harry Stoke Road, and this would increase the distance travelled. However, although the kissing gate on the existing route at Point B has been removed, users would need to negotiate a ditch before emerging onto Harry Stoke Road. Pedestrians using the existing route would emerge close to a busy, multi-laned light-controlled junction and also near to the sharp bends in Harry Stoke Road. The proposed route would remove the need to cross the ditch and would be more convenient to users. In addition, Point D would also provide pedestrians with improved visibility of any vehicles using Harry Stoke Road, thereby removing the potential for conflict between pedestrians and vehicles that currently arises at Point B.
3. Although the proposed route would maintain connectivity, in achieving this it would be longer than the existing path. There would also be the extra journey beyond Point D to achieve linkages with Filton Road and footpath LSG 30. In terms of distance and journey time, the proposed route would be less convenient, and from the evidence before me it appears that the existing route was used as both a recreational link and as one for commuters. Unlike the proposed route, the existing path is an unsurfaced and unlit field path. As the proposed route would be surfaced and lit, it would provide an easier and safer route for pedestrians, and particularly so for commuting purposes during winter months and hours of darkness.
4. The alignment of the proposed route would be in a similar direction to Harry Stoke Road (Points A – C). Since Harry Stoke Road is essentially a single carriageway road with intermittent footways, as the proposed route would be solely for pedestrian use it would provide a safer alternative than walking Harry Stoke Road.
5. Whilst there may be a desire by some to retain the footpath on its long-standing alignment, there is nothing to suggest that there is any historical significance attached to the original line. Concerns have been raised regarding the loss of the existing route’s semi-rural experience, but this is primarily a result of the development of the surrounding area for which planning permission has been granted. Given the changes that are occurring to the area, the proposed route would provide users with a route that would include walking alongside hedgerows and passing through areas of open space. This would be in accordance with the guidance contained within the Rights of Way Circular 1/09 whereby alternative alignments should avoid the use of estate roads, with preference being given to the use of made-up estate paths through landscaped or open space areas away from vehicular traffic.
6. The proposed path would mostly be level apart from a gentle slope downhill from Point C to Point D. This gradient would be less severe and of shorter duration than those encountered on the existing route. There would be no kissing gates for users to negotiate as is the case on the existing route, and no need to cross over the ditch at Point B. Taken as a whole, the proposed line would be longer but easier and safer to walk, and on balance there would be no disproportionality to persons with protected characteristics, and therefore no conflict with the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010.
7. The existing path passes under two lines of pylons and electricity cables. Whilst noting the concerns of objectors regarding pollution and safety, whether the cables are above or below ground, users of either route would be very close to the cables.

*Impact upon persons whose properties adjoin or are near the footpath*

1. There is no evidence before me from which I could conclude that persons whose properties adjoin the existing right of way would suffer loss or inconvenience as a result of the proposed diversion.

**Other Matters**

1. Concerns have been raised regarding the exploration of and possibility of alternative routes through the site, the waste of land and resources with the proposed route, uncertainty surrounding the changes to the public highway outside the development site, and the treatment of the pylons and electricity lines. However, it is my role to consider the merits of the diversion as shown in the Order and not any alternative proposals favoured by objectors. Matters concerned with the merits and implementation of the planning permission are not for me to consider.
2. Finally, concerns regarding the Planning Inspectorate’s and the Council’s handling of the case have to be pursued by other means separate from the consideration of the Order.

**Conclusion**

1. The Order has been made to enable the execution of a planning permission, and the development would obstruct footpath LSG 19. The proposed diversion would be longer, but as referred to above there would be benefits arising from the diversion, and these benefits would outweigh the disadvantage of the increased distance. When taken as a whole the proposed diversion would not result in inconvenience or loss to the public in general, nor to those whose properties are adjacent to the footpath. There would be no disadvantage or loss to other parties that would outweigh the advantages conferred by the Order.
2. Having regard to these and all other matters raised, I conclude that the Order should be confirmed.

**Formal Decision**

1. The Order is confirmed.

J J Evans

INSPECTOR

COPY – NOT TO ORIGINAL SCALE

