

|  |
| --- |
| **Order Decision** |
| Site visit made on 2 August 2022 |
| **by Claire Tregembo BA(Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 2 September 2022** |

|  |
| --- |
| **Order Ref: ROW/3289798** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Staffordshire Moorlands District Council Public Footpath Number 27 (Part) (Parish of Caverswall) Diversion Order 2021.
 |
| * The Order is dated 19 September 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
 |
| * There were fourteen objections outstanding when Staffordshire Moorlands 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. I undertook an unaccompanied site inspection on Tuesday 2 August 2022.
2. Some parties commented that there was no pre-order consultation prior to making the diversion order. Although pre-order consultation is recommended, there is no requirement under the Town and Country Planning Regulations 1993 to undertake one. From the documents on file and the notices seen on site, I am satisfied that all legal requirements were complied with and that no parties were prejudiced by the lack of pre-order consultation.
3. The Council indicated that there were fourteen objections to the proposed order, but only twelve were provided. The Council advised that two parties did not consent to their objection letters being published. They were asked to contact these individuals and advise them that if they did not agree to their objections being circulated to the parties involved, their objections would not be taken into consideration when determining if the Order should be confirmed. They responded stating that they wrote to them in November 2021, but no response was received from one of the parties, and the other letter was returned by Royal Mail as ‘addressee unknown’.
4. They also indicated that another party had consented to their objection being published, but they had not received one from them. The Council have confirmed that they do not have an objection from them but had written to them in December 2021 advising them of this and requesting a copy. They also advised that they lived with two other objectors, so should be aware of the referral to the Planning Inspectorate.
5. The Order before me contains the planning permission for a development of two bungalows. It is apparent from the Statements of Case, that a subsequent planning permission has been approved for three dwellings requiring the same diversion. However, this application is not before me, and I have not seen the planning permission or development plans for it. Therefore, my decision only relates to the development of two bungalows and the diversion necessary for them to be built. If the developer proceeds with the later planning permission, a separate diversion order will need to be made and confirmed before that permission can be carried out.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 1990 Act) provides for an Order to be made authorising the stopping up or diversion of a footpath, bridleway, or restricted byway if it is necessary to do so in order for development to be carried out in accordance with planning permission granted under Part III of the 1990 Act.
2. In considering the confirmation of 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 or persons whose properties adjoin or are near to the existing highway, should be weighed against the advantages of the proposed Order. There are effectively two issues that must be considered, the necessity test and the merits test. Confirmation of the Order requires that both are satisfied.
3. The impact of the diversion order on the human right for private and family life has been raised. I must consider these concerns in relation to the Human Rights Act 1998 (the 1998 Act). Article 8 of the 1998 Act states that ‘Everyone has the right to respect for his private and family life, his home, and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.’
4. I must also have regard to any material provisions in any rights of way improvement plan for the area when determining the Order. In addition, in reaching my conclusions I must consider the requirements of the Equalities Act 2010 where appropriate.

Reasons

***Whether the diversion is necessary to allow development to be carried out in accordance with planning permission***

1. Planning permission was granted on 15 November 2019 for the erection of two detached dormer bungalows and expires on 15 November 2022. The footpath crosses the proposed development site, passing through one of the bungalows and its gardens.
2. I am satisfied that planning permission is extant and directly relates to the land crossed by the Order route. I am also satisfied that the diversion order is necessary to allow the development to be carried out in accordance with the approved planning permission.

***Disadvantages of the proposed order***

*Impact on path users*

1. Concerns were raised relating to the impact the diversion would have on the enjoyment, convenience, safety, security, and use of the footpath by members of the public. These concerns were due to the increased length, the creation of an alley and blind corners, changes to the character, loss of views, the potential for anti-social behaviour, maintenance concerns, and a lack of improvements for those with reduced mobility.
2. The Order seeks to divert part of the footpath from across the field to the field edge. The section to be diverted is approximately 50 metres long with a width of 1.5 metres and a grass surface. The proposed new footpath is 68 metres long with a width of 2 metres and a grass surface. It would run in part between property boundaries.
3. The diversion route is eighteen metres longer than the existing footpath. I consider this to be only a slight increase and do not believe that the additional length would inconvenience path users.
4. Instead of crossing the field, the diverted footpath would follow the field edge along the boundary with an adjoining property, which is half hedge and half fencing. It would be separated from the new bungalows by a 2 metre high boundary fence. Clearly there would be a change in character by relocating and enclosing the footpath. Some users may find an enclosed route less enjoyable than a footpath across an open field, others may prefer a clearly defined route. This change would only be for 40 metres. I consider that any change in character resulting from the diversion would have a minimal impact on the enjoyment of those using the footpath.
5. I accept that enclosing the footpath would impact on the views from it. The field has a slight increase in level as the footpath moves away from the road. The existing buildings and hedges alongside Kingsley Road limit views to the north. Views to the south are limited by the existing field hedge which is to be retained. The existing views are largely limited to the field through which it runs. Longer distant views are available from the field south of C, which is not affected by the diversion. I accept that the new bungalows may affect these views and would result in the loss of a field. However, I consider that any loss of views resulting from the diversion would have limited impact on the enjoyment of those using the footpath.
6. There are concerns that enclosing the footpath, adding a corner, and removing a streetlight would impact on public safety. The enclosed section is only 40 metres long and would be visible from the roadside. Whilst the section between B and C will not be visible from the roadside, the existing footpath south of C is not currently visible either because of the existing hedge line. Therefore, there is no change to the visibility of the footpath from the roadside. A planning condition requires the relocation of the existing streetlight; therefore, this would not impact on the safety of the footpath. Furthermore, the streetlight is approximately 18 metres from the start of the footpath and intended to light the road and pavement, not the public footpath, so does not directly light it. I agree with the Council that many existing public rights of way are not visible from the roadside or other public viewpoints, but this does not make them unsafe.
7. None of the parties refer to any existing issues with crime or anti-social behaviour on the current line of the footpath, including the southwestern end, which is already enclosed. I do not consider that the diversion and enclosing part of the footpath would lead to the development of such issues.
8. With regards to maintenance issues, the existing and proposed surface are both grass. I see no reason why the grass on the diverted line would have more of an impact on walkers than the grass on the existing footpath. The enclosing of the footpath may cause slower grass growth, due to more confined use, making it easier to use. In any event the Highway Authority would be responsible for ensuring the maintenance of the footpath surface, as is the case with the existing and other public rights of way.
9. It is proposed that the development will be bounded by a fence, with details of all boundary treatments requiring approval from the Local Planning Authority prior to first occupation. The boundary alongside the existing property is hedge for approximately 20 metres, therefore only a short distance would require maintenance. The owner of the hedge would be responsible for ensuring that it did not obstruct the line of the footpath, with the Highway Authority having enforcement powers if this did not occur. Although there is potential for the hedge to encroach on the footpath, I consider that this would have minimal impact on the use and enjoyment of the footpath.
10. Concerns were raised about the lack of improvements to access for those with reduced mobility. No specific improvements were mentioned, but comments were made about the existing stiles along the footpath. No structures are included within the Order. Although no improvements are proposed, I do not consider that the diversion has any negative impacts on accessibility along the footpath.
11. For the above reasons, I conclude that the proposed diversion would not inconvenience members of the public or impact on their safety when using the footpath and would only result in minimal impact on the enjoyment of those using it.

*Impact on persons and properties adjoining the highway*

1. The owners of the adjoining property state that the diversion would impact on the enjoyment of their home and garden due to concerns of ‘social issues and nuisance’. They believe that it will cause an invasion of privacy and contravene their human rights to respect for their private and family life as the footpath will be diverted directly alongside their boundary, only a metre away from the side of their house. This would allow the public to hear them when they are in their garden or have their windows open. They are also concerned that it would have a negative impact on the saleability and value of the property due to the potential nuisance and stigma associated with a footpath alongside it.
2. None of the parties refer to any existing crime or anti-social behaviour issues. The side boundary of the property can be reached from the existing footpath entrance by anyone intent on doing so. I see no reason why the diversion of the footpath would lead to the development of such issues or create a nuisance for the adjoining property.
3. The existing footpath commences from the roadside, alongside the corner of the adjoining property and continues across the field with a maximum distance of 28 metres from it. The proposed diversion would move the footpath alongside the property boundary for its full length. The front garden has a hedge alongside it and the house and rear garden a 2 metre high fence. These screen the house and garden preventing members of the public from seeing in.
4. Moving the footpath directly alongside the boundary could make it easier to hear conversations. However, the fence and hedge would reduce what could be heard from the garden and indoors, even with the windows open. The house walls would also significantly reduce what could be heard from inside the house. Background and traffic noise would also make it harder to hear normal conversations. Furthermore, the public only have a right to pass and repass along the footpath. Any conversations that could potentially be heard would be limited because of the short time that it would take to walk along the path. I therefore consider that any loss of privacy would be minimal with little impact on the right to a private or family life.
5. As the existing footpath already starts from the corner of the adjoining property and crosses the adjacent field, I consider that diverting the footpath would have minimal effect on the value of it.
6. The owners of the adjoining property and another neighbour are concerned that the diverted path would give immediate access to the rear of their properties, making it easier to access an area that is out of sight to engage in criminal activity and anti-social behaviour. Currently it is possible to reach this area from the existing footpath at point C and walking along the proposed line to point B, a length of only 28 metres. Persons undertaking illegal activities are unlikely to be deterred by a lack of public right of way and I do not believe that the diversion would make it any easier for such activities to occur. I consider that the diversion would not impact on crime or anti-social behaviour to the rear of the properties.
7. For the above reasons, I consider that any impact on human rights or harm to properties alongside or close to the diversion is limited. When balanced against the public’s interest in diverting the footpath to allow its continued use, the provision of housing and the benefits to the owners of the development, the impact is proportionate. I am satisfied that any potential for negative interference is in accordance with the 1990 Act and does not cause a violation under the 1998 Act.

***Advantages of the proposed order***

1. The main benefit of the Order is that it would allow the construction of the approved development. When considering the overall effect of the Order, the confirmation would allow the development to go ahead and make provision for the continued use of the footpath.

***Whether the development is substantially complete***

1. At the time of my site visit the proposed development site was a grass field with no works having been undertaken. I am satisfied that the development is not substantially complete.

***Conclusions on the relevant tests***

1. The diversion order is necessary to allow the development to be undertaken in accordance with the approved planning permission. I consider that there is limited impact on the enjoyment of the public using the path and no loss of convenience, therefore there is no significant disadvantage to the public using the footpath. The impact on the adjoining properties would be minimal, and in my view, without any violations under the 1998 Act. When weighed up against the benefits to the owner of the development site, the implementation of the approved planning permission, and continued use of the public footpath, I am satisfied that the Order should be confirmed.

**Other Matters**

1. Reference is made to various issues with existing stiles and an overgrown section of the footpath. These matters do not relate to the Order and are outside of my jurisdiction. Other avenues exist to pursue complaints of this nature and concerned parties should contact the Highway Authority to resolve them.
2. The proximity of the footpath to a dangerous junction was raised. However, the start and end points are not altered by the diversion, and the footpath can still be used to avoid the junction.
3. The loss of the field, the impact this would have on the climate and life in public places were also raised. These issues were taken into consideration when the planning application was determined. I understand that these matters are important to the local community, but they are not matters I can take into consideration when determining the Order.

Conclusions

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

Formal Decision

1. I confirm the Order

Claire Tregembo

INSPECTOR

