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| **Order Decision** |
| Site visit made on 6 September 2022 |
| **by Mrs A Behn Dip MS MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 October 2022** |

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| **Order Ref: ROW/3285310** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as The Buckinghamshire Council (Public Footpath No 70 (part) Parish of Great Missenden) Public Path Diversion Order 2021. |
| * The Order is dated 5 March 2021 and proposes to divert part of the public right of way as shown on the Order plan and described in the Order Schedule. |
| * There was 1 objection outstanding when Buckinghamshire Council (BC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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###### Procedural matters

1. I made an unaccompanied site visit on 6 September when I was able to walk Public Footpath No 70 (FP No 70) on its current line and the Order route on its proposed diversion.
2. In writing this decision I have found it convenient to refer to points marked on the Order Map.
3. BC have requested if the Order is confirmed that Part 2 of the Order Schedule (Description of Site of Alternative Highway) is amended to include the proposed width of the route, which is 3 metres throughout.

The Main Issues

*The statutory test*

1. Section 257 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 if it is necessary to do so in order to enable development to be carried out in accordance with a valid planning permission already granted under Part III of the same Act.

*Other material considerations*

1. In considering whether or not to confirm an Order, the disadvantages or loss likely to arise as a result of the diversion of the way to members of the public generally, or to persons whose properties adjoin or are near the existing highway, should be weighed against the advantages of the proposed Order.
2. The requirements of the Equality Act 2010 should also be considered where appropriate.

Reasoning

*Background*

1. Sustrans have received funding from the Department for Transport which will enable them to create a Greenway stretching from Uxbridge to Buckingham and Milton Keynes. The Misbourne Greenway between Wendover and Great Missenden will form part of this project and has the aim of setting out a safe and attractive multi-user route away from the busy A413, to encourage walking and cycling, both for leisure and for access to work, school, and amenities. The proposed diversion of FP No 70 would form the southern end of the Misbourne Greenway.
2. Although much of the Misbourne Greenway is a permissive path with agreement of the landowners, the proposed diversion in question here, would retain its status as a public right of way, as agreed by the owner of the land, Road Farm.
3. FP No 70 does not materially affect the creation of the southern section of the Misbourne Greenway but the planning consents granted, require, as part of the conditions for development, that the part of the footpath that crosses the mainline railway via an unmanned level crossing, be stopped up and the crossing removed.

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

1. I am satisfied that the planning permissions PL/19/4427/FA and 19/04476/APP are extant, albeit PL/19/4427/FA is the permission that directly relates to land upon which the diverted route will sit.
2. The relevant condition in both planning consents states the following:

* Prior to the approved development being brought into use the following shall be implemented:

1. The public right of way (GMI/70/4) over Great Missenden level crossing(Great Missenden No.70 Level crossing, Network Rail ref: MCJ2 30m, 3ch) shall be permanently stopped up.
2. Great Missenden No.70 Level Crossing (Network Rail ref: MCJ2 30m, 3ch) shall be closed; and
3. Any necessary diversional route shall be completed and operational.
4. In a physical context, there is no need to make any changes to FP No 70 for development to take place. However, for the development to proceed it must comply with the valid planning permissions above and the conditions thereby imposed. Both permissions contain conditions that require that Footpath No 70 is stopped up over the railway crossing, in order that the Level Crossing can be closed. As there are two extant planning permissions presented in support but only one of these is included in the Order, as both are deemed relevant and if the Order should be confirmed, it would be appropriate to modify the Order to record both permissions.
5. The reasons given for this requirement are to ensure the proposed development does not increase footfall across the level crossing, so as to minimise risk to users of the footway and the railway infrastructure and to ensure the safe operation of the railway. The reasons comply with the National Planning Policy Framework and the Local Plans for the area.
6. The current route of FP No 70 travels east to west across the railway line in a rural location. The line is active and there are currently 79 trains that traverse the crossing in a 24-hour period. Evidence provided suggests that the crossing has been little used in recent years and accordingly the risk posed by the crossing is fairly low.
7. Although likely future use cannot realistically be determined, I do accept Network Rail’s view that the new Misbourne Greenway of which this proposed diversion is part, would likely attract a much larger number of users than currently use FP No 70. This would change the dynamic of the use of the area from an infrequently used rural footpath to that of an open and easily accessible surfaced route attractive to walkers, cyclists, families, and those who have mobility restrictions. With a potential increase in use and change in user profile, there would likely be a fundamental rise in the risk of public safety should that part of FP No 70 that crosses the railway line remain open.
8. Whilst ensuring safety of the public is a priority to Network Rail, the operational efficiency that would be affected if there were an incident, near miss, or trespass is also a material factor in their rationale for closing the crossing.
9. The imposition of the planning conditions that require the diversion of the path, in turn determines that the diversion of the path is necessary to enable development to take place, in accordance with planning permission granted under Part III of the 1990 Act. The development is essentially frustrated unless the path is diverted, thus justifying the statutory test.
10. I now move on to consider the advantages and disadvantages of the proposed Order.

*Disadvantages v advantages of the proposed Order*

1. Confirmation of the proposed Order would result in the loss of that part of FP No 70 that crosses the railway line and heads in a south westerly direction uphill, to meet with GMI/1 on the western side of the railway line. The replacement path would not terminate at a similar point, west of the railway line, but instead would run parallel to the railway line on its eastern side, in a south easterly direction before turning east to connect to the Aylesbury Road. A short walk is then required to reach the underpass that leads across to GMI/1 as well as to other connecting footpaths that are west of the railway line.
2. The objector pointed out that the proposed route was longer, entailing ‘a walk alongside the railway line for approximately 0.5 kilometre, a short walk along the Aylesbury Road and then a walk under the railway before walking up GMI/1’. Certainly, if the intention is to reach the GMI/1 at Point A on the map from Leather Lane or the A413, then the proposed route is considerably longer than that of FP No 70. It should be noted however, that users wishing to utilise FP No 70 in this way would likely be recreational walkers as FP No 70 connects to further rural public rights of way to the west of the railway line. With this in mind, the longer distance of the proposed diverted route would be diminutive compared to the total distance generally being travelled in a recreational capacity.
3. The offered diversion, in comparison, does provide a safe shorter route to Great Missenden, avoiding the busy A413 and does not have the limitations of the two sets of stiles and steps of the current footpath, thus being a better suited route for those users with protected characteristics under The Equality Act 2010.
4. The objector stated that the current route of FP No 70 is very pleasant and the alternative route is a much less pleasant walk. It is true that the current footpath offers commanding views and an enjoyable walk across open fields and that the alternative is less pleasing. The diverted route would run alongside the railway track, across an open field, away from the busy A413. This route although not as enjoyable, does however provide a safe green route for users to easily access Great Missenden as well as the GMI/1 via an underpass close to the termination point at E.
5. BC suggested that the Misbourne Greenway, which would be created as a result of this proposed diversion, will result in much higher usage than that observed on the current route of FP No 70, the Greenway benefitting health and exercise and boosting leisure spend and enjoyment of the area. It would also provide a safe off-road route for walkers and cyclists, between Wendover and Great Missenden as there is currently no footway or cycleway on the corresponding section of the A413.
6. BC also advised that the proposed diversion of FP No 70 and the ensuing Misbourne Greenway would provide for long circular walks that are currently not available.
7. Limited weight can be given to the benefits of the Misbourne Greenway as the majority of this route has not yet been realised and consequently the larger picture of this multi-use route has little current relevance to the proposed diversion.
8. The objector noted that the current route of FP No 70 provides a point of crossing to Leather Lane. The section of FP No 70 from the A413 to Point C on the map would be retained, still giving access to Leather Lane. From Point C, the diversion route running south would still provide access to Great Missenden as well as the GMI/1 to the west of the railway line, via the underpass to the south.
9. The objector also considered that the replacement footpath was totally different and unsuitable, although this comment was not expanded upon. I agree that the proposed path is quite different from the current footpath but in many ways its suitability could be found to benefit a large proportion of the public, wanting to head north or south in a safe environment. For those people wanting to travel east or west, the proposed route whilst much longer, is not substantially unsuitable for the type of recreational walk being undertaken.
10. When looking at the overall network in the immediate vicinity, the majority of public rights of way lie to the west of the railway line with very little in the way of connectivity to the east of the railway line. It follows then, that use from east to west of the FP No 70 is likely to be sparse, in correlation with the evidence of use provided. The type of use is also likely to be recreational and part of a longer walk. Thus, the extra length of the proposed diversion, when travelling east or west is not substantially inconvenient or more of a disadvantage than the ability to travel safely.
11. It is acknowledged that the proposed diversion route would be 3 metres wide and surfaced appropriately for multi-use, providing better access opportunities for families and users with mobility restrictions. The proposed Order route would also negate the need to cross stiles, a railway line, and negotiate steps or an unmade surface in inclement weather. These advantages hold significant weight.
12. There are no properties adjoining or immediately close by the proposed route, so there would be no disadvantages to local residents in this respect.
13. The proposed diversion and to a larger degree, the Greenway as a whole, does support the Buckinghamshire Council Rights of Way Improvement Plan objectives for better connecting the rights of way network, specifically sections EN1 and EN3 ensuring access improvements are strategically planned to meet needs and evolving the network to meet needs and improve connectivity.

Conclusions

1. It is clear that the Grampian conditions imposed in the planning consents for the Misbourne Greenway necessitate that the FP No 70 is diverted in order for the development of the Greenway to take place, or otherwise be frustrated due to non-confirmation of the Order.
2. Both public safety and operational efficiency of the railway are issues that are in the public interest and hold some weight when considering the rationale and merit of the Order.
3. The quite apparent disadvantage of the diversional route is that it is significantly longer. However, the rural nature of the current line of FP No 70 with its limitations of stiles, steps and railway line suggests recreational use by a finite audience. In this context, the additional time and distance would likely represent a proportionally small increase in overall journey time.
4. Whilst the more convenient route across the railway line to join the rural paths on the west of the railway from the A413 would be lost for the small number of people using it, the proposed diversion does offer a route to reach the western side of the railway, albeit longer. There is comparatively greater public benefit in enabling the development to take place, providing a safe, easily accessible route by foot and on bicycle without the need to negotiate the limitations of the current footpath.
5. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed with modifications.

Formal Decision

1. I confirm the Order subject to the following modifications :

On the Order, at the end of the first paragraph, delete (Planning Application Reference 19/04476/APP) and insert (Planning Application References 19/04476/APP and PL/19/4427/FA).

On Part 2 of the Order Schedule, at the end of the description for C-D-E, remove the full stop after the word ‘dashes’ and insert the words ‘with a width of 3 metres throughout’.

Mrs A Behn

**Inspector**

