LOGO

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| **Order Decision** |
| Site visit made on 21 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: 21 October 2022** |

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| **Order Ref: ROW/3288094** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as Canterbury City Council (Public Footpath CB174 (part) Littlebourne) Public Path Diversion Order 2020. |
| * The Order is dated 18 August 2020 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 Kent County Council (KCC) submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is confirmed.** |
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###### Procedural matters

1. I made an unaccompanied site visit on 21 September when I was able to view the legal orientation of Public Footpath CB174 and walk the Order route on the approximate line of the proposed diversion.
2. For the avoidance of doubt, the Order Making Authority is Canterbury City Council with Kent County Council acting on their behalf by virtue of a service level agreement.
3. In writing this decision I have found it convenient to refer to the points marked on the Order Map.

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 stopping up or 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. Planning permission was granted in December 2019 for a two-storey side and rear extension with replacement garage at Weir Lodge, following demolition of the existing garage and diversion of the public right of way.
2. The evidence before me indicates that historic flooding and damage to the weir wall rendered a small part of the legal line of this footpath unusable at some point while the property was vacant, and that users of the path instead walked across the front of the property to avoid walking next to the weir wall, before crossing the property in a south easterly direction to join the surrounding paths. The KCC view that this brief departure from the legal route would have been an exercise of common law by users to deviate around the obstruction appears to be a reasonable assertion.
3. KCC also advised that a Temporary Traffic Regulation Order had been in existence that formally closed the section of footpath running next to the weir just south of Point A on the plan, for safety reasons.

*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 permission 19/01997 is extant and directly relates to land affected by the Order route. On the day of my site visit no development had commenced that had any significant impact on the path.
2. The plans show that the proposed alterations, specifically the rear extension, clearly affect the legal line of Footpath CB174, as the building would cross the path.
3. This in turn verifies 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 as the development cannot lawfully take place unless the path is diverted, thus justifying the statutory test.
4. I now move on to consider the advantages and disadvantages of the proposed Order.

*Disadvantages v advantages of the proposed Order*

1. The CB174 is a rural route leading from the village of Littlebourne into the countryside, linking to other rural paths to the east of the parish. Use of this route is likely to be predominantly for leisure purposes. The replacement path would be slightly longer than the legal line by a short distance of 36 metres, but this additional length is diminutive when looking at the total distance likely to be travelled in a recreational capacity.
2. It is noted that the proposed diversion route would vary between 1.5 metres and 2.7 metres in width, with a flat, even surface, providing better access opportunities for families and users with mobility restrictions. The above advantages of the proposed route hold significant weight when compared with the unwalkable legal line of the path which has a pinch point by the weir and uneven surfacing that would require steps.
3. The suggested diversion also provides a safe route around the curtilage of the property and does not have the limitation or safety risk of walking a narrow, uneven, and sometimes waterlogged path next to the unprotected weir. Consequently, this is more suitable for vulnerable and less abled users.
4. The objector understood the need for the path to be diverted whilst construction took place for safety reasons. However, he felt strongly that the path should be reinstated once building works were complete, as he had walked the path for many years and did not agree with the proposed diversion, feeling there was no reason for the path to be re-routed.
5. To keep the path on its original legal line would not physically be possible due to the extension effectively blocking said line.
6. With regard to the deviated line taken due to the weir wall damage as an alternative to the proposed diversion, this offers no significant advantage to users, as there would be an intermittent risk of negotiating vehicles moving within the property and few users prefer to cross a private garden or indeed encounter animals’ resident within the property. The objector did comment that the presence of signs indicating a dog was resident on the property would likely deter users from wanting to walk there. Nevertheless, the deviated line as an alternative route is not a matter for consideration, as it is not the route in the Order before me.
7. There are no other properties adjoining or immediately close by the proposed route, that would be disadvantaged by the proposed diversion and so there is no disbenefit to local residents in this respect. Indeed, there is significant correspondence indicating support for the proposed route from local users and parish councils.

**Other Matters**

1. There were a number of comments from the objector concerning historic flooding of the area along with drainage issues from the weir concerning the Environment Agency. The fact that the land affecting the legal path, the deviation and the proposed diversion can be prone to flooding, means there is always risk in this regard no matter where the path is situated in the immediate area. Correspondence from local residents and users strongly suggests that the diverted route is considered favourably, with missives stating that it is less muddy, less dangerous, and less intrusive.
2. The drainage options pertaining to the river and weir and the expectations of the Environment Agency in this regard as mentioned by the objector, are not relevant matters that can be considered under the criteria for examining the proposed diversion.
3. The objector felt strongly that the plans for landscaping the garden and making it private would not materialise, and that the area he had walked before the temporary diversion came in to place would ultimately end up as a car park for the residents of Weir Lodge. The statement of case from the architect clearly states the intentions of the landowner in this regard and there is no definitive evidence that the proposals for the garden will not come to fruition. Even so, the future realisation of the landowners’ proposals for the area is a matter outside the scope of this decision.
4. The objector stated that redirecting the footpath was not necessary for the owner’s privacy, although this comment was not expanded upon. It is undeniably the case that the proposed diversion would allow the residents of Weir Lodge to enjoy a privacy that the current line of the path does not allow and would enable them to landscape their garden and parking area, providing a secure environment for themselves as well as any pets or livestock.
5. A comment was made by the objector that some of the proposed diversion sits outside of the landowner’s boundary. The evidence before me shows that this matter has been resolved to the satisfaction of the neighbouring landowner and that the current permissive path will be amended slightly to ensure that the proposed diversion is entirely situated as per the Order Map and within the title of Weir Lodge.
6. The objector also commented that ancient hedgerow and mature trees had been removed by the landowner without survey or permission, and that fencing had been erected two years ago, also without permission. I understand these concerns, however they are matters that are outside of my jurisdiction and not relevant to the criteria that must be applied in determining a diversion under S257 of the 1990 Act.

Conclusions

1. It is clear that the planning consent for building works at Weir Lodge necessitates that the legal line of a short section of footpath CB174, as shown on the Definitive Map and Statement, is diverted in order for the development to take place, or otherwise be frustrated due to non-confirmation of the order. Thus, the diversion of the path is necessary to allow development to be carried out in accordance with a valid planning permission.
2. It is considered that the route walked over recent years on this very small section of path, which is at odds with the Definitive Map and Statement, resulted from damage sustained by the Weir, rendering the stretch to the west of the property unwalkable. Consequently, walkers exercised their right to deviate around the obstruction.
3. Consideration has been given by KCC to incorporating the route on its deviated line. However, I concur that there appears to be little advantage to be gained by this as it will encroach heavily on the privacy of the residents of Weir Lodge, as well as presenting occasional risk of negotiating moving vehicles, encountering of dogs and livestock and the sense of discomfort many walkers feel, from walking within a private garden in very close proximity to three sides of the residents’ house.
4. There is comparatively, much greater public benefit in the proposed route. It is of generous width, even in surface, and provides a safe, easily accessible route, offering good views, and without the need to negotiate the limitations of the original footpath.
5. Many local representations supporting the merits of the proposed diversion were presented in evidence. This indicates that most users consider the proposed route to be preferable to the original line.
6. The only apparent disadvantage of the proposed diversional route is that it is 36 metres longer. However, the rural nature of CB174 and the surrounding network of public rights of way to the east of Weir Lodge as a whole, suggests primarily recreational use and in this context, the additional distance would represent a negligible increase in overall journey time.
7. 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.

Mrs A Behn

**Inspector**

**COPY OF ORDER MAP – NOT TO ORIGINAL SCALE**

