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| **Order Decision** |
| Hearing Held on 6 September 2022  Site visit made on 8 September 2022 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment, Food, and Rural Affairs** |
| **Decision date: 23 January 2023** |

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| **Order Ref: ROW/3276285** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Mendip District Council Glastonbury WS 15/31 Part, Pear Tree Farm Public Footpath Diversion Order 2020. |
| * The Order is dated 8 October 2020 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Mendip District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation and at the commencement of the hearing. |
| **Summary of Decision: The Order is confirmed subject to modification.** |
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Procedural Matters

1. I initially opened the hearing to assist in the determination of whether this Order should be confirmed in the format of a virtual event on 6 September 2022 as the objector to the Order had requested that their objection be heard before an Inspector. The objector was not present at the opening of the hearing and could not be contacted. I consequently adjourned the hearing.   
   I, nonetheless, visited the site on 8 September 2022 and walked the route of both the existing footpath and the proposed diversion, as well as inspecting the development site and the immediately surrounding area.
2. Following the adjournment, the objector did not respond to subsequent enquiries as to whether they still wished their objection to be heard in person. I therefore advised the applicant, the Order Making Authority (OMA), and the objector, in writing, that I intended to proceed to consider the Order based on the written evidence provided and the site visit. None of the parties raised an objection to this approach.
3. The Order has been made to divert part of Footpath WS 15/31 in order to allow development authorised by a planning permission to be carried out. The Order as made, however, contains a technical error. The Order refers to an approval, referenced: 2019/0499/REM. This is a Reserved Matters approval which is not, of itself, a planning permission being a submission made to satisfy conditions attached to an outline planning permission. It is, nonetheless, clear from the evidence I have been provided with that the reserved matters approval followed an outline planning permission relating to the development, referenced: 2013/1444, which was granted on 3 June 2016. A copy of the decision notice for this planning permission has also been submitted.
4. The lack of a reference to the outline planning permission is a slight omission that does not fundamentally affect the Order and is capable of being rectified by a minor modification to the opening paragraph of the Order, which sets out the purpose of the Order and the planning reference number of the development permitted. Modifying the Order in this manner to correct this small technical error would not prejudice the interests of any of the parties involved.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 (the 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 planning permission already granted under Part III of the same Act.
2. In considering whether or not to confirm 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 generally, or to persons whose properties adjoin or are near the existing public right of way, should be weighed against the advantages of the proposed Order.
3. It should be noted that, in considering whether or not to confirm this Order, the merits of the development are not at issue. However, it should not be assumed that because planning permission has been given necessitating closure or diversion of a footpath that confirmation of the ensuing Order will automatically follow.

Reasons

*Whether the diversion of the footpath is necessary to allow the development to be carried out*

1. The current, definitive, route of Footpath WS 15/31 runs from a point to the rear of numbers 30 and 32 Old Wells Road (Point B on the Order Map) and proceeds generally northwards along the rear boundary of numbers 32 and 34 Old Wells Road, cutting across the south east corner of the garden of the latter property. At this point the footpath turns north eastwards and runs diagonally across a field to Point A on the Order Map where it passes through the boundary hedge by way of a stile. From here it runs in a generally northerly direction parallel to the eastern boundary of the field to meet Brindham Lane, crossing a boundary fence by way of a further stile.
2. Part of the field that is crossed diagonally by the footpath is currently being developed for housing. From the evidence before me, outline planning permission was granted for residential development on 3 June 2016, referenced: 2013/1444, and a subsequent application for reserved matters approval, referenced: 2019/0499/REM, for a development described as “The erection of 29 dwellings. Matters of access, appearance, landscaping, layout, and scale to be determined” was approved on 3 June 2020. I am advised by the OMA that all of the relevant conditions attached to both the outline planning permission and the reserved matters approval have been discharged.
3. The evidence provided contains an annotated copy of the approved site layout plan (Drawing Number GL\_PL-001 Revision M) which indicates that the present definitive line of the footpath would intersect with the proposed houses on Plots 25 and 26 of the development, in addition to passing through the garden areas of these plots.
4. When I visited the site I observed that although construction work was well advanced on parts of the wider development site, the present line of the footpath was excluded from the working site area by weldmesh fencing and a temporary surface had been added to the footpath.
5. An Order can be made and confirmed under Section 257 of the Act provided that the works have not been substantially completed and that part of the planning permission spent.
6. No building work on the properties on these plots had commenced at the time of my site visit. However, it was apparent from the site visit that if the development is to be implemented in accordance with the terms of the planning permission, the present definitive line of the footpath would be obstructed.
7. From what I saw when I visited the site, I am satisfied that the relevant part of the permitted development has not yet been substantially completed. A grant of planning permission does not authorise the obstruction of a Right of Way and the planning permission for this site cannot be fully and lawfully implemented in accordance with its terms if Footpath WS 15/31 were to be retained on its existing line.
8. For the above reasons, I conclude that the diversion of the public footpath is necessary to allow the development to be carried out.

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

1. It is proposed to divert the existing line of the footpath between points A and B on the Order Map so that the footpath would then run in a generally north south alignment from Point A, parallel with the eastern boundary of the field, through a gap to be created in the southern boundary hedgerow and thence to join Footpath WS 15/30 at Point C on the Order Map. Footpath WS 15/30 runs in an east to west direction and is coterminous with Footpath WS 15/31 at Point B on the Order Map, to the rear of numbers 30 and 32 Old Wells Road.
2. The proposed diversion would result in the overall length of the route from Brindham Lane to Old Wells Road becoming approximately 43 metres longer than the current route using Footpath WS 15/31. There is no evidence that would indicate that the footpath is anything other than a primarily recreational route and within this context, an additional 43 metres is neither significantly longer, nor would it make the route notably less convenient in terms of its predominant use.
3. The gradient and walking surface of the new route would be similar to the existing route and the rural character of the route through open land would be largely unaltered. The width of the new route would be 2 metres. I have not been advised of the recorded width of the current route, however, where visible on the ground, the width of the current path is less than 2 metres. The proposed diversion would not materially alter views of the surrounding countryside available from the footpath and would not substantively alter the overall experience of walking the footpath.
4. The current, defined, line of the footpath passes through the rear garden area of number 34 Old Wells Road although it was apparent from my site visit that this short section was not accessible as there were no gaps in the rear boundary fence around this property and the line of the footpath was not visible within the garden area. It was evident that users of the footpath divert around this section and use the existing field gate to re-join the footpath. The proposed diversion would remove this section of the path that is currently within the domestic garden and would be beneficial to the occupiers of the property in terms of privacy and security by formally removing this part of the route.
5. The applicant also suggests that the proposed diversion would also allow greater flexibility in terms of the agricultural use of the field, particularly with regard to the use for grazing, as it would facilitate clear segregation of users of the footpath from the use of the field. It is also suggested that this ability to separate the uses would provide a safer route for users.
6. The applicant also points out that the proposed diversion would maintain the current rural and recreational character of the footpath and provide a shorter route between Brindham Lane and other elements of the footpath network on land to the east.
7. From what I have read and from what I saw when I visited the site, there is nothing that would lead me to disagree with these points.
8. Although the current route of the footpath runs parallel to the rear boundary on number 32 Old Wells Road, I observed that this property does not have any access points in the boundary fence. The proposed diversion would therefore not alter the current situation for this property in terms of accessing the footpath, which in any event terminates at a narrow path immediately adjacent to the southern boundary of the property. The only other property that adjoins this section of the right of way is number 30 Old Wells Road, as the end point of the right of way is adjacent to the north east corner of its curtilage. The circumstances of this property would be effectively unaltered by the proposed diversion.
9. The objection to the proposed diversion contains little detail but is made on the grounds that it is not necessary to divert the footpath which has been in place for many years, and on the grounds of increased traffic on Brindham Lane as a result of the development.
10. Although the routes of Public Rights of Way may be long established, they are not immutable. For this reason, the Act contains provisions which allow, provided certain circumstances are met, for the route of a Public Right of Way to be diverted, or in certain cases extinguished, to accommodate development that has been permitted under the terms of the Act.
11. The objector has suggested that the approved layout of the development could be amended to retain the current route of the footpath. However, I have no power to amend the planning permission that has been granted by the Local Planning Authority and I cannot consider the planning merits of the approved scheme.
12. Whilst the proposed development would, undoubtably, result in a larger number of vehicle movements on the nearby road network than previously, this is a matter that would have been considered by the Local Planning Authority as part of its consideration of the planning applications. Neither the current route of Footpath WS 15/31, nor the proposed diverted route, intersects with a highway used by vehicular traffic at any point along its length, other than at the termination points on Brindham Lane and Old Wells Road, which are unchanged by the proposed diversion. As a result, I do not find that the proposed diversion would be any less safe to use than the current route.
13. I therefore find that the proposed diversion would not result in any significant inconvenience or loss to members of the public generally, or to persons whose properties adjoin or are near the existing public right of way. The proposed diversion would also remove a section of the route from a private garden and allow greater flexibility in the agricultural use of the field currently crossed by the footpath. As a result, the advantages of making the Order would outweigh any minimal inconvenience arising from the slightly longer overall length.

**Conclusions**

1. For the above reasons, I conclude that the Order should be confirmed.

**Formal Decision**

1. I confirm the Order subject to the following modification: In the second sentence of the opening paragraph of the Order after the word “Reference” delete “Number:” and insert the words “Numbers: 2013/1444 and” before “2019/0499/REM”.

John Dowsett

INSPECTOR

ORDER MAP – COPY – NOT TO SCALE

