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| **Order Decision** |
| Site visit made on 19 September 2023 |
| **by J Ingram LLB (Hons) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 10 October 2023** |

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| **Order Ref: ROW/3312562** |
| * This Order is made under Section 118 of the Highways Act 1980 and is known as The Hampshire (Havant Borough No. 3) Public Path Extinguishment Order 2021. |
| * The Order is dated 11 August 2021 and proposes to extinguish 2 unrecorded footpaths as shown on the Order plan and described in the Order Schedule. |
| * There was one objection outstanding when Hampshire County Council (HCC) 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 modification set out below in the Formal Decision.** |
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Procedural Matters

1. The two unrecorded footpaths proposed for extinguishment are the subject of a Definitive Map Modification Order (DMMO) application, made in 2015, under the provisions of the Wildlife and Countryside Act 1981. The DMMO application is yet to be determined. For the avoidance of doubt HCC state, in promoting the extinguishment order, they have treated the footpaths as if they are public.
2. I will refer to various points on the Order routes and the adjacent footpath. I have appended a copy of the Order plan to the end of my decision.

The Main Issues

1. The Order is made on the grounds that the path is not needed for public use. By virtue of Section 118(2) of the Highways Act 1980 (1980 Act), if I am to confirm the Order, I must be satisfied it is expedient to extinguish the path having regard to:
2. the extent, (if any) to which it appears the path would, apart from the Order, be likely to be used by the public; and
3. the effect the extinguishment of the right of way would have as respects land served by the path, account being taken of the provisions for compensation.
4. In accordance with section 118(6) any temporary circumstances preventing or diminishing the use of a path or way by the public shall be disregarded.
5. I also need to have regard to any material provision in any rights of way improvement plan (ROWIP) prepared by any local highway authority whose area includes land over which the Order would extinguish a public right of way. No provision within HCC’s ROWIP which is material to the Order has been identified and I have not therefore considered the issue further.
6. I have had regard to the judgements of *R v SSE ex parte Stewart* [1980] KPL 537 and *R v SSE (ex parte Cheshire County Council* [1991] JPL537 which clarified the relevant tests to be applied. Whilst the OMA must consider the need for the path for public use when making the Order, I must look at its likely future use.

Reasons

***Background***

1. Portsmouth City Council (PCC), as the landowner, were granted permission to build an affordable housing development on land adjoining Kingsclere Avenue in Havant. PCC applied to Havant Borough Council (HBC), as the local planning authority, to divert the affected unrecorded footpaths under section 257 of the Town and Country Planning Act 1990 (TCPA). An Order was made, however, it was found to contain material drafting errors and therefore did not proceed.
2. In 2018 HBC made an Order under section 119 of the 1980 Act to divert the unrecorded footpaths. The Order was not confirmed as the new paths were found to already legally exist, as they were the subject of a deed of dedication that was progressed by HCC. It was therefore not possible to divert the unrecorded routes onto this same alignment.
3. Following that decision, PCC made an application to HCC under section 118 of the 1980 Act. This was on the basis that neither route is needed for public use as a result of the earlier footpath dedication. The dedicated footpaths provide access between Dunsbury Way and Kingsclere Avenue.

*The extent to which it appears the paths would, apart from the Order, be likely to be used by the public*

1. Before the development was built the Order routes originally ran over an open field. The Order route begins to the west of Dunsbury Way at point A, it follows a north westerly direction to Kingsclere Avenue at point B. The second Order route also begins at point A and continues to what is now known as Fred Francis Close at point C. The development is completed therefore the Order routes now run through several properties and curtilages. The Order routes are unavailable for use where they are obstructed, however, it is possible to use part of the route A to B where it crosses the public open space.
2. Pre-order consultation was carried out by HCC; the Ramblers Association, Open Spaces Society, HBC, and the local member had no objections to the proposed extinguishment. One objection was received from the applicant of the DMMO application. The objector states the original paths were a direct and convenient link, the alternative route is a much longer, inconvenient, and meandering path. This increases journey times and decreases the convenience for users. The objector is concerned that pedestrians are using the road as an alternative. Although it is designated as a ‘Home Zone’, he claims vehicles presume priority and continue to drive at local road speeds.
3. The alternative routes, dedicated by PCC, are now recorded as Havant Footpath 528. This provides access between Dunsbury Way and the adopted footways connecting to Kingsclere Avenue. The path is block paving and tarmac, it has lighting, and is signposted as a pedestrian and cycle route. Fred Francis Close is a cul-de-sac therefore vehicle use is limited to access to the properties, and as a designated ‘Home Zone’ area, it has a speed limit of 20 miles per hour. With the exception of one point where the dedicated route crosses Fred Francis Close, the route is separate from vehicular traffic. At the time of my visit, there was only two vehicles that entered the cul-de-sac, they appeared to be driving with due care.
4. The alternative dedicated route is approximately 50 metres longer than walking the Order route between points A and B, and 38 metres longer than route A to C. I consider these distances to be minimal in this context. There is also the option of walking a more direct route across the site by accessing other footways and footpaths, whilst these paths are not recorded, they are open for public use.
5. The Order routes may have been well used at one time, when the area was an open field, but now the area has changed considerably there are no obvious signs of use. By contrast the footpaths and footways through the site are clearly laid out and provide a connection between Dunsbury Way and Kingsclere Avenue. In addition the cul-de-sac itself, and the whole central area of the site, is provided as public open space.
6. In considering the Order routes I have disregarded the fact that they are now partly obstructed and have not been in use due to the development. However, I consider if the routes were not obstructed, there would be very limited future use, as there are now alternatives available. Aside from the objector, there does not appear to be demand from the local residents to use the Order routes. There is nothing before me to indicate use of the Order routes is likely to increase in the future.

***The effect the extinguishment of the paths would have as respects land served by the paths, account being taken to the provisions as to compensation***

1. The Order routes run through several properties and curtilages. If the Order is not confirmed the property owners would be directly affected. The negative impact on the value of those properties would be of great concern to the owners. Privacy and security would also be of concern where the routes run through curtilages.
2. In these circumstances extinguishment of the Order routes would substantially reduce the impact on the property owners. In balancing the public interest, I consider PCC have addressed the needs of the public by dedicating an alternative route. I consider the extinguishment would not have a negative impact for the public with respects to land served by the path. The entrance and exit points to the site remain the same and there is a minimal increase to the length of the routes.

***Whether it is expedient the paths should be stopped up***

1. I should only confirm the Order if I am satisfied it is expedient to do so. I need to consider if it is suitable and appropriate to confirm the Order taking into account any other relevant considerations.
2. The objector believes the Order routes to be the most direct and convenient. The objector considers the housing development could have been implemented with little or no alteration to the Order routes.
3. The Order clearly states it is made because the footpath is not needed for public use. Before accepting the extinguishment application, consideration was given to diverting the footpath, but circumstances meant that a diversion was not possible.
4. I have concluded above there is limited use of the Order route, and the public are unlikely to use it now or in the future. I have also concluded the extinguishment would benefit the landowners. Consideration was given to a diversion, but this was not possible as the new path already legally existed. Therefore, I am satisfied it is expedient to confirm the Order.

**Other Matters**

1. No path width was included within the Order. Rights of Way Circular 1/09 states at 5.13 that authorities should specify widths in every 1980 Act Order. Rights of Way Advice Note No. 16 - Widths in Orders, states that it is acceptable to use a phrase such as ‘the whole of the width’ where the intention is to extinguish all of the affected section. I am satisfied that the intention of HCC was to extinguish the whole of the width in the case of these two unrecorded footpaths.
2. I consider reference to the width should be included so it is clear the whole width is extinguished. I am satisfied that this is a simple clarification and does not require further advertisement.

Conclusions

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

**Formal Decision**

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

* In the description of both paths, after ‘**That part’** insert **‘and the whole of the width’**.

*J Ingram*

INSPECTOR

**ORDER MAP - COPY - NOT TO ORIGINAL SCALE**

