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| **Order Decision** |
| Site visit made on 21 March 2023 |
| **by John Dowsett MA DipURP DipUD MRTPI** |
| **an Inspector appointed by the Secretary of State for Environment Food and Rural Affairs** |
| **Decision date: 16 January 2024** |

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| **Order Ref: ROW/3297184** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Leeds City Council (Horsforth Public Footpath No. 50) Diversion Order 2021. |
| * The Order is dated 6 December 2021 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. |
| * There were five objections outstanding when Leeds City Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation. |
| **Summary of Decision: The Order is not confirmed.** |
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Background

1. The current defined line of Footpath Number 50, as shown on the extract from the Definitive Map and Statement that I have been provided with, presently commences at Lea Lane and proceeds in a southerly direction to the rear of Hall Park Avenue. On the Order Map the route is additionally shown as turning north east from the rear of Hall Park Avenue, Point A on the map, for a distance of approximately 70 metres before turning south east and running to Point B and from there continuing south east to the rear of numbers 14-22 Church Lane to join the footway adjacent to Church Lane. It appears that this latter section was added to the Footpath around 10 years ago.
2. On 11 November 2020 full planning permission, Planning Permission Reference: 20/04297/FU, was granted for a development which was described as “New two story school building, relocated and expanded hard courts, reconfigured and expanded parking provision, and diverted footpath” at Horsforth School, Lee Lane East, Horsforth, Leeds LS18 5RF. Planning permission was granted subject to a number of conditions. Whilst it is not confirmed in the evidence whether all the relevant conditions have been discharged, I have no reason to believe that this is not the case.
3. Among the drawings approved as part of the planning permission is Drawing Number 347001-SoS-00-00-DR-A-0005 Revision A04, which is a proposed site layout/block plan. This drawing shows the position of the proposed new building and the proposed hard courts. The present route of Footpath No. 50 runs a short distance to the north west of the proposed hard courts and then turns south east to pass between these and the proposed new building. Also included within the red line planning application boundary is a new section of footpath which follows the line proposed for the diversion of Footpath No. 50 as set out in the Order. In addition, the drawing shows an area of car parking within a separate red line boundary, which although part of the planning permission, is not material to this decision.

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

1. The Order has been made under Section 257 of the Act and proposes stopping up the existing line of the footpath and diverting it to a new route to the south west of the current line between Points A and B on the Order Map.
2. The development permitted by Planning Permission Reference: 20/04297/FU does not involve any physical development over the existing definitive line of Footpath 50. However, as a result of the approved development, the land over which the section of Footpath 50 currently passes between Points A and B would be incorporated into the school grounds. It is set out in the Order Making Authority’s (the OMA) Statement of Case that as the line of the footpath would cross school grounds, for operational and child safeguarding reasons it is undesirable for the right of way to remain on its present route.
3. I saw when I visited the site that the new, two storey, school building had been constructed and was in use. The hard courts had also been installed and a surfaced footway had been constructed on the line of the proposed diversion set out in the Order. The hard courts and the two storey building were enclosed within a security fence which formed a continuation of the school security fence and gates have been installed in this security fence at Points A and B. I also observed that a footway remained on the current definitive line of Footpath 50. The OMA’s Statement of Case sets out that the line of the proposed new footpath was used as a temporary diversion whilst the school site was being developed.
4. From the evidence before me and from what I saw when I visited the site, no operational development was proposed or has occurred over the route of the definitive line of Footpath 50 with the exception of a gate blocking the route, the planning permission has been implemented, and the development has been constructed and subsequently brought into use. Taken together, these facts would indicate that it was not necessary to permanently divert the footpath in order to allow the operational development permitted by Planning Permission Reference: 20/04297/FU to be carried out.
5. Although not a point made by the OMA, the planning permission involved incorporating an area of land, previously the site of an adult training centre and now occupied by the hard courts, into the school grounds. It is potentially arguable that this involved a material change of use which was implicit in the planning permission for the development. Nonetheless, because the school boundary fence has been extended to enclose this area and the change of use occurred when the hard courts were brought into use, it cannot be argued that the diversion of Footpath 50 is necessary to allow this to be carried out.
6. Given the above, the requirement to divert the route of the footpath is, in effect, a consequence of the development authorised by the planning permission being implemented and completed, rather than a necessity to allow the development itself to be carried out.
7. In these circumstances, it is not possible to use the provisions of Section 257 of the Act to divert the footpath and the Order cannot be confirmed. It is therefore not necessary to consider 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, against the advantages of the proposed Order as this would not result in a different outcome.

Conclusions

1. For the above reasons, I conclude that the Order should not be confirmed.

**Formal Decision**

1. I do not confirm the Order.

John Dowsett

INSPECTOR

ORDER MAP - COPY NOT TO SCALE

