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| **Order Decision** |
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| **by Charlotte Ditchburn BSc (Honours) MIPROW** |
| **An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 May 2024** |

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| **Order Ref: ROW/3340096** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the Public Footpath No.7 (Part) in the Parish of Elford Public Footpath Diversion Order 2022. |
| * The Order is dated 24 August 2022 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 Lichfield District Council 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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###### Preliminary Matters

1. Staffordshire County Council and the applicant (Lichfield District Council) have requested a minor modification to the wording of the Order to amend the limitations recorded on the route. There would be no need for this modification to be advertised further.
2. The Order has been determined on the papers submitted. I have not visited the site, but I am satisfied that I can make my decision without the need to do so.

The Main Issues

1. It is proposed that part of Public Footpath No.7 (FP7) in the Parish of Elford be diverted onto an alternative alignment. Since the Order is made under Section 257 of the Town and Country Planning Act 1990 (the 1990 Act), if I am to confirm the Order, I must be satisfied that it is necessary to permanently divert the length of footpath in question onto the alternative line shown on the Order plan to enable development to be carried out in accordance with the planning permission granted. The procedure is only available if the consented works have not been substantially completed.
2. The merits of the planning permission granted for the development are not matters that are before me in respect of this Order decision. However, the grant of planning permission does not mean that a public right of way will automatically be diverted. When considering whether or not to confirm the 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.
3. In short, there are two issues that must be considered here. These legal tests, as outlined above, have been described by the Courts as “the necessity test” and “the merits test”. Confirmation of an Order requires that both are satisfied.
4. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.

Reasons

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

1. On 6 April 2020 planning permission (reference 19/00662/REMM) for the approval of Reserved Matters for appearance, landscaping, layout and scale for the erection of 25 dwellings including new access and vehicle turning area in accordance with application 17/01379/OUTM, was granted by the Local Planning Authority. For the purposes of this decision, this is the relevant planning permission, and which directly relates to the land crossed by the footpath. The layout of the approved development shows that there would be an attenuation pond on the existing line of FP7.
2. I am therefore satisfied that the approved development would encroach onto the existing line of the footpath. Consequently, I conclude that it is necessary to divert the footpath to enable the approved development to be carried out in full.

*The extent to which the diversion of the footpath would disadvantage members of the public generally or persons whose properties adjoin or are near to the footpath affected by the Order*

1. There was one objection which the Order Making Authority and the County Council (the objector) agree has been addressed by the proposed modification to the Order to remove references to proposed kissing gates, therefore there would be no gates, stiles or other limitations on the proposed route.
2. No submissions have been made regarding any disadvantages to the members of the public or persons whose properties adjoin or are near to FP7. Having reviewed the submissions and plans, I am therefore satisfied that the order meets the merits test.

Conclusions

1. I have concluded that the diversion of FP7 is necessary to enable development to be undertaken in accordance with planning permission granted for the site. The proposed diverted footpath would remove the current stiles, leaving gaps instead, thereby improving accessibility for all users.
2. For the reasons given above, I conclude that no disadvantages to the public generally, or to persons whose properties adjoin or are near the existing highways arising from the diversion of the footpath have been raised.
3. 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:

* Remove paragraph 4 a): “The replacement of the stiles located in the vicinity of Points A and B on the attached plan with Kissing Gates to a standard which complies with BS 5709:2018”.
* In the main body of the order at paragraph 4 remove “b)” and replace with “a)”.

Charlotte Ditchburn

INSPECTOR

ORDER MAP - COPY NOT TO SCALE

