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| **Order Decision** |
| Site visits made on 17 January 2023 and 28 October 2024 |
| **by C Beeby BA (Hons) MIPROW** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 13 November 2024** |

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| **Order Ref: ROW/3296799** |
| * This Order is made under Section 257 of the Town and Country Planning Act 1990 and is known as the District of North West Leicestershire Footpath O111 land between the Royal Hotel Station Road and Ashby Bathgrounds Ashby de la Zouch Public Path Diversion Order 2021 (the Order).
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| * The Order is dated 21 April 2021 and proposes to divert the public right of way shown on the Order map and described in the Order Schedule.
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| * There were four objections outstanding when North West Leicestershire District Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for determination.
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| **Summary of Decision: The Order is confirmed subject to the modifications set out below in the Formal Decision.** |
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Procedural Matters

1. A planning application (reference 19/01792/FULM) was submitted to the District Council in September 2019 for the erection of apartments, a care home, an office building, a café kiosk and associated access and landscaping at the site. The Order was made in response to this.
2. The 2019 application was subsequently withdrawn and a new application (ref 22/01552/FULM) for the erection of 17 dwellings at the site was submitted in 2022. Planning permission for the new application was granted on 25 July 2024. Objectors to the Order were re-consulted in light of the 2022 planning application, and both their original and any resulting submissions have been taken into account here.
3. Although the related planning scheme has consequently changed, the Council maintains its support for the Order as the diversion is considered to be equally necessary in response to the 2022 application, and the route of the road which the new path would follow is the same. It has supplied updated details and plans for the 2022 scheme, including a new Order map (reference 3890-08 of September 2022), a copy of which is attached to this decision.
4. If my decision is to confirm the Order it will consequently be necessary to update the planning permission description within the preamble to the Order, and to add the new map to the Order, so that the Order refers to the correct proposal.

The Main Issues

1. Section 257(1) of the Town and Country Planning Act 1990 provides for an Order to be made to authorise the 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 an 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.
3. In short there are two issues which must be considered. These legal tests have been described by the Courts as “the necessity test” and “the merits test”. Confirmation of the Order requires both tests to be satisfied.
4. In addition, in reaching my conclusions I have considered the requirements of the Equality Act 2010 where appropriate.

Reasons

*Background*

1. The Order seeks the diversion of Footpath 0111 in the town of Ashby de la Zouch, Leicestershire. Planning permission 22/01552/FULM was granted for the erection of 17 townhouses with associated car parking access, landscaping and car park to hotel and associated access amendments at The Royal Hotel, Station Road, Ashby de la Zouch. The site in question lies between Station Road and the Bath Grounds, an area of parkland.

*Whether the diversion of Footpath O111 is necessary to allow development to be carried out in accordance with planning permission*

1. I am satisfied that the relevant planning permission is extant and directly relates to the land crossed by the Order route.
2. The planning permission permits the construction of a dwelling, private gardens and parking spaces on land crossed by part of the existing footpath. The diversion order is necessary, due to the permitted physical obstruction, to allow development to be carried out in accordance with the planning permission.

*Disadvantages of the Order*

1. Guidance within DEFRA’s Rights of Way Circular 1/09 (2009) states that alternative paths to accommodate development should avoid the use of estate roads wherever possible, with preference given to the use of made up estate paths through landscaped or open space areas away from vehicular traffic. Similar guidance is contained in Leicestershire County Council’s “Development and Public Rights of Way” guidance (2011). The proposed section of path would follow an estate road carrying vehicular traffic. The section would be short and would be a cul-de-sac providing vehicular access to small areas of parking at the Bath Grounds and the new development. Thus, it would be likely to carry only limited levels of traffic at slow speeds, which users would walk next to over only a short distance. A short section of the existing path is shared between pedestrians and vehicles, so that there is already some interaction between the two types of use on the route. In view of these considerations, the use of an estate road close to vehicular traffic for the proposed route conflicts with the guidance, and forms a limited disadvantage of the Order.
2. The health and wellbeing benefits of access to nature are well recognised. Whilst the existing path passes through a small area of trees and undergrowth, the proposed path would pass housing and parking, so that its surroundings would be more suburban in appearance. Nevertheless, a condition to the planning permission requires the approval of a soft landscaping scheme at the development by the local planning authority in order, amongst other matters, to mitigate against the proposed tree loss. The retention of some of the existing trees and vegetation and the planting of new soft landscaping is envisaged, and would contribute to this mitigation. Thus, whilst the Order may result in a reduction in users’ experience of nature along the path and use of the path for recreation, this would be minimal in degree due to the small size of the wooded area crossed by the existing path and to the landscaping scheme proposed.
3. The existing section of path is 93 metres long and the proposed section would be 113 metres long. Whether this would increase the distance to be walked for path users depends on their direction of travel along Station Road. In some cases the diversion would increase the distance to be walked by a short distance; in other cases it would decrease it. As a result, the minor difference in lengths of the existing and proposed paths does not form a clear disadvantage of the Order.
4. The proposed route would lie closer to the Grade II\* listed Royal Hotel, so that views of the heritage asset available to path users would not be diminished by the Order in itself. Limited views of the Bath Grounds parkland area are possible from the existing path. It is submitted that glimpses of the town’s castle are also possible. The proposed path would lie close to the existing path and would have a similar alignment. Views of the parkland and castle from it would consequently be so similar to those currently possible that the Order would not have a harmful effect on the availability of such views.
5. A submitted 1923 Ordnance Survey map shows paths within the grounds of the Royal Hotel, but does not clearly show the section of existing public footpath proposed for diversion. Thus, any historic connection of the path with the Bath Grounds, and how it may be eroded such that it would form a disadvantage of the Order, has not been demonstrated.
6. The existing section of path is described as 2-3 metres in width and the whole of the proposed section would be 2 metres wide. Whilst the Order would consequently result in a limited reduction in the width of path available at some points, the proposed path would have a width which would allow for two pedestrians to pass comfortably. It would allow for wheelchair users or those accompanied by pushchairs. Use of the existing path on both days of my site visits was regular but it was not busy, and there is nothing to suggest that these dates were unusual in this regard. It is submitted that events at the park give rise to increased congestion along the existing path, however these have not been demonstrated to occur so frequently that a limited reduction in available width at some points of the proposed path would result in unacceptable harm in terms of congestion. Thus, I do not consider that the level of use of the proposed path would generally be so considerable that its reduced width would result in unacceptable congestion. Therefore the limited reduction in path width would not form a disadvantage of the Order.
7. It is submitted that the diversion would increase the exposure of path users to a busy road and resulting pollution and noise from traffic. Station Road was subject to frequent traffic on the days of my visits, and would be the main source of traffic pollution and noise in the vicinity. Nevertheless, as set out above, whether the Order would increase the distance to be walked along Station Road depends on users’ direction of travel on it. In some cases the Order would decrease this distance, and hence would decrease any exposure to associated pollution and noise.
8. The existing section of path does not have a tranquil character due to traffic noise from the nearby Station Road. The existing and proposed paths lie in close proximity and consequently the levels of noise from traffic on Station Road experienced on the two would be very similar. Whereas the existing path passes through a wooded area and away from traffic, the proposed path would follow a road through the scheme. Nevertheless, I have identified above that the road would be likely to carry limited levels of traffic at slow speeds, which users would walk next to over only a short distance. These considerations are unlikely to result in an unacceptable increase in exposure of path users to pollution and noise from traffic on the new road within the development.
9. Vehicles pass along part of the existing path for access to and from the cricket pavilion to the south. Pedestrian and vehicular users consequently share part of the existing route. As the proposed route would be almost entirely footway there would be less requirement for vehicles and pedestrians to share a space. Furthermore, conditions are imposed on the planning permission to ensure the safe pedestrian and vehicular use of the accesses within the development, including the southern access road which the proposed path would follow. Finally, the highway authority raises no concerns regarding highway safety at the scheme. Overall, I am consequently satisfied that the Order would not increase the likelihood of highway safety incidents.
10. There is nothing before me to suggest that confirmation of the Order would cause disadvantage or loss to the owners of nearby property.

*Advantages of the Order*

1. The existing section of footpath has limited lighting and passes through an area of woodland and vegetation in an urban location. Visibility of its surroundings would consequently be limited during the hours of darkness. Notwithstanding the absence of submitted documentary evidence of any safety issues, some path users are consequently likely to feel less safe at such times due to these physical characteristics. Although the proposed section would include a slight bend in the same way as the existing path, the section would be likely to be subject to greater natural surveillance due to its route through a more developed area comprising housing, gardens and a parking area. As a road which would provide access to housing and parking, the proposed route would be likely to be reasonably well lit. Overall, the proposed footpath would consequently feel safer to use than the existing path during the hours of darkness.
2. The existing path has a partly beaten earth surface with areas of stones and had some muddy patches on the days of my site visits. Whilst some people may prefer an earth surface, such muddy areas could be slippery or hard to navigate, particularly for those with reduced mobility. At this town centre location the path is likely to be subject to use by commuters to work, school or shoppers, who are less likely to be wearing suitable footwear for negotiating muddy areas, so that a surfaced path would benefit their safety and convenience. The proposed path would be surfaced and hence would provide a more accessible route throughout the year for many people in this regard. Overall, I consider that a surfaced route, at this location, is likely to increase rather than decrease the path’s attractiveness to most people. In this respect the Order would provide better facilities for users, gaining support from provisions within the National Planning Policy Framework (2023) in this regard. These considerations form a considerable benefit of the Order.
3. There is nothing before me to suggest that any effects in terms of biodiversity would form a disadvantage of the Order. Nevertheless, the submission that biodiversity benefits would result from the Order are unsupported by evidence, so that they do not form a benefit.
4. It is suggested that a proposal to sell the Bath Grounds parkland to the Council would secure its future, and is dependent on the development scheme proceeding. It is stated that this would also enable the cricket and bowls club to secure long-term leases and to apply for funding. However, minimal evidence is before me on these matters, so that they have not been demonstrated to form potential benefits of the Order.

*Whether development is substantially complete*

1. No notable work had commenced on the proposed development at the time of my most recent site visit. I am satisfied that the development is not substantially complete.

*Conclusions on the relevant tests*

1. I have concluded that it is necessary to divert the Order route to allow development to be undertaken in accordance with the approved planning permission.
2. I consider that the benefits of the Order to the safety and convenience of path users by the provision of a surfaced route with improved lighting outweigh any disadvantages, as set out above. I am satisfied that the Order should be confirmed.

*Other Matters*

1. In reaching my conclusions I have had due regard to the Public Sector Equality Duty (the PSED) set out in section 149 of the Equality Act 2010. The proposed route would have a generally level gradient which would be similar to that of the existing route. It would have a more accessible surface and, whilst the diversion would result in a slight increase in the distance of some journeys, it would reduce the distance of others. Given these considerations and my conclusions concerning the limited reduction in path width which the Order would bring about, it would not have an unacceptable effect on disabled people. On balance, therefore, the Order does not conflict with the three equality principles of the PSED.
2. The Secretary of State has no power to amend a planning permission, so that alternative proposals, which may make the diversion unnecessary, cannot be considered in this decision. Similarly, an Order under section 257 is not an opportunity to revisit the planning permission, so that its merits are not before me for consideration here.

Conclusion

1. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to modifications to update the planning permission description and to add the new Order map, in the interests of clarity.

**Formal Decision**

1. I confirm the Order subject to the following modifications:
* Replace paragraphs a) and b) (“an application for planning permission….enable the development to be carried out”) of the preamble to the Order with “it is necessary to divert the footpath to which this order relates in order to enable development to be carried out in accordance with planning permission granted under Part 3 of the Town and Country Planning Act 1990, namely: the erection of 17 townhouses with associated car parking access, landscaping and car park to hotel and associated access amendments at The Royal Hotel, Station Road, Ashby de la Zouch, Leicestershire, planning application reference 22/01552/FULM”.
* The new Order map attached to this Decision (reference 3890-08 dated September 2022) shall be added to the Order in order to clarify the correct development scheme to which this Decision relates.

*C Beeby*

INSPECTOR

 