



Order Decision

Site visit made on 4 April 2024

by **A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)**

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 18 April 2024

Order Ref: ROW/3315747

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Bath and North East Somerset Council (Public Footpath BC16/1, Kelston Road, Newbridge) Public Path Diversion Order 2022.
- The Order is dated 7 July 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 Bath and North East Somerset Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. In this decision I have found it useful to refer to the various points annotated on the Order plan. For ease of reference, a copy of the Order plan is attached below.

The Main Issues

2. Section 119(6) of the Highways Act 1980 involves three separate tests for an Order to be confirmed. These are:

Test 1: whether it is expedient in the interests of the landowner, occupier, or the public for the path to be diverted. This is subject to any altered point of termination of the path being substantially as convenient to the public.

Test 2: whether the proposed diversion is substantially less convenient to the public.

Test 3: whether it is expedient to confirm the Order having regard to the effect which; (a) the diversion would have on public enjoyment of the path as a whole, (b) the coming into operation of the Order would have as respects other land served by the existing public right of way, and (c) any new public right of way created by the Order would have as respects the land over which the right is so created and any land held with it.

3. In determining whether to confirm the Order at Test 3 stage, (a)-(c) are mandatory factors. On (b) and (c) of Test 3, the statutory provisions for compensation for diminution in value or disturbance to enjoyment of the land affected by the new paths must be taken into account, where applicable.
4. Regard must also be had to any material provision contained in a rights of way improvement plan ("ROWIP") for the area under section 119(6A). Other relevant factors are not excluded from consideration and could, for instance, include those pointing in favour of confirmation.

Reasons

Whether it is expedient in the interests of the owner of the land that the path in question should be diverted

5. The diversion Order has been made pursuant to an application by the City of Bath Scouts, who are the leasehold owners of the land over which both the existing and proposed routes pass. The Order seeks to divert footpath BC16/1 so that the route can be aligned around the edges of fields, before connecting with existing footpath BA14/17. The diversion would realign a section of the route that crosses over a field used by minors for camping, into and around the edge of an adjoining field. The proposed diversion route would thereby divert walkers around the camping field used by the scouts. Consequently, the proposed diversion of the footpath would be in the interest of the leaseholder for safeguarding reasons.
6. Additionally, the diversion would further align a section of the route around the edge of a field used to keep horses, and would include the erection of fencing which would separate users of the path from grazing horses. The submissions before me indicate that there has been an occasion where a horse had to be euthanised as a result of being chased by a dog that accompanied a walker on the cross field section of the existing footpath.
7. In light of the above, I am satisfied that it is expedient to divert the footpath in the interests of the landowner for reasons of animal welfare and in respect of safeguarding measures for minors.

Whether any new termination point is substantially as convenient to the public

8. Section 119(2) of the 1980 Act provides that a public path diversion order shall not alter a point of termination of the path— (a) if that point is not on a highway, or (b) (where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public.
9. At point C on the Order plan, the termination point for the diverted route would be the same as for the existing footpath. However, the western termination point of the footpath would be changed from point A to point D as shown on the Order plan. Point D is situated approximately 50 metres south-south-east of point A, in a location where there is a greater level of visibility in both directions for pedestrians wishing to cross over Kelston Road. Point D would also be positioned directly opposite the northern entrance of public footpath BC16/2 which is located on the other side of Kelston Road.
10. Whilst noting the difference in distance between the termination points at the western end of the routes, the proposed diversion route would end at a point where there would be greater levels of visibility for pedestrians crossing Kelston Road. Consequently, I conclude that the termination points of the proposed diversion will be substantially as convenient to the public and, in my view, would represent an improvement when compared to the existing position.

Whether the new path will not be substantially less convenient to the public

11. The existing route of footpath BC16/1 runs east for approximately 398 metres between points A-B-C as shown on the Order plan. The evidence before me indicates that the diverted footpath would be 95 metres longer than the existing

footpath. It appears that the use of the existing footpath is predominantly recreational in nature, and I therefore consider that the increase in length would not make the Order route substantially less convenient when compared to the existing footpath.

12. Both the existing route and the proposed diversion route have similar gradients. The existing route has a natural grass surface. The surface of the proposed diversion route would be the same with the exception that where horses enter the grazing field from an adjacent yard close to point K on the Order plan, ground works would be carried out to provide a surface of porous stone reinforced with geotextile. Those ground works would help to prevent deterioration of the surface of that area between the grazing field and the horse yard as a result of repeated horse movements into and out of that field.
13. The existing route includes a stile at point L, as well as including three sets of kissing gates located on the existing route between points A-B. The applicant for the Order will replace the stile at point L with a kissing gate. Furthermore, the applicant will install a new kissing gate at point D on the Order plan following removal of the three sets of kissing gates that are located between points A-B on the existing route. Consequently, the diverted route would contain one less stile and one less gate when compared to the existing route. As such, I consider that the reduction in the number of structures which users would have to negotiate, would mean that the proposed diverted route would be more convenient for all users.
14. Overall, and having regard to the above factors, I conclude that the proposed diverted route would not be substantially less convenient to the public and, in various respects, will be more convenient.

The effect of the diversion on public enjoyment of the path as a whole

15. An objection to the Order has been submitted which concerns the impact of the proposed diversion on public enjoyment, and specifically in relation to the section of the proposed diversion route between points L-K-C. The Objector contends that the existing route represents the direct route that walkers wish to take across the field, maintaining that horses grazing in that field are comfortable with walkers. The Objector further raises concerns that the section of the proposed diversion route between points L-K-C would be enclosed by fencing, with the result that users would feel contained into a narrow strip of land between lines of fencing. In that regard, the Objector also contends that the proposed diversion route would be more difficult to maintain than the existing cross field route.
16. In those regards, whilst it is noted that some users may wish to retain the more direct and shorter route of the existing footpath, for the reasons given above I have found that the proposed diversion route would not be substantially less convenient to the public when compared to the existing route. Furthermore, it is clear that whilst horses may be comfortable with some users entering the grazing field, that may not be the case when users are accompanied by dogs. The provision of fencing would help ensure that similar incidents to that described in paragraph 6 above, could not happen again in the future. As above, the proposed diversion would therefore be in the interests of the landowner.
17. It is correct that the section of the proposed diversion route between points L-K-C would be enclosed by the proposed fencing that would separate users and horses

within that field. However, it is important to note that the proposed route would have a recorded width of 3 metres and would be set in from the field boundary by an additional 2 metres to provide a walkable width of 5 metres. In my view, at such a width users would not feel hemmed in or constrained by the proposed fencing. It should also be noted that the existing route has a recorded width of 1.8 metres and if I were not to confirm the Order, the applicant landowner could decide to fence the existing route between points L-C at that width.

18. In terms of maintenance of the proposed diversion route between points L-K-C, the Objector contends that narrow strips of land between fencing would become overgrown with vegetation during the summer and would become muddy during the winter months.
19. However, in my view overgrowth of vegetation would likely be controlled or suppressed by the frequent passage of users. Furthermore, it is noted that in the event that vegetation is required to be removed or cut back, the 3 metre recorded width of the proposed diversion route would provide a greater level of access for maintenance when compared to the 1.8 metre wide existing footpath if it were to be fenced off in the future. Additionally, the greater width of the proposed diversion route would be likely to result in a more diffuse distribution of users' footfall when compared to the abovementioned narrower width of the existing route through the field in question. Consequently, it is unlikely that the surface of the proposed diversion route would become more difficult to traverse as a result of repeated footfall creating muddy conditions.
20. The proposed diversion route would provide similar varied gradients to those which users would encounter on the existing footpath. The proposed diversion route would also predominantly provide similar views of the surrounding landscape to those which users experience on the existing footpath. However, the alignment of the proposed diversion route would pass through a small section of wood between points E-F-G and would cross over a stream at point F, whereas the existing route only traverses fields. In that respect, the proposed diversion route would provide a more varied route when compared to the existing route.
21. Taking account of the above factors, I conclude that on balance and as a whole, enjoyment for users of the footpath would not be diminished as a result of the proposed diversion.

The effect of the diversion on other land served by the existing paths and the land over which the new paths would be created

22. The diversion route and the existing route are both within the same ownership. The existing footpath provides a connection between Kelston Road and Footpath BA14/17, and this connection would be preserved if the diversion is confirmed. The land served by the existing footpath would benefit from the removal of the existing route by providing improved security and privacy for camping scouts.
23. As noted above, the proposed diversion route would enter a wooded area and would cross over a stream between points E-F-G. In that respect, it is proposed to clear a 2 metre wide path through the wooded area and install a bridge over the stream at point F. It is noted that, by reason of a programme of planting additional trees previously carried out by the applicant for the Order, Bath and North East

Somerset Council considers that any effect on biodiversity or forestry would likely be negligible as a result of the proposed diversion.

24. There is no evidence that the proposed diversion will have any other potential negative impacts on the land affected by either the proposed diversion route or the existing route. As such, and for the above reasons, I conclude that the proposed diversion route would not have any negative effect on land served by the existing or proposed routes.

Rights of Way Improvement Plan (ROWIP)

25. I have been provided with a copy extract from the ROWIP. In that respect, the proposed diversion would contribute towards achieving a number of actions contained within the ROWIP. Amongst other matters, the proposed change to relocate the western termination point to a location where visibility for those wishing to cross over Kelston Road is greatly improved, in combination with the proposal to install fencing between points L-K-C to separate users from grazing horses, would contribute towards achieving an action within the ROWIP to identify and carry out improvements for people with mobility difficulties and visual impairments. There is no other evidence or submissions which suggest that the proposed diversion would conflict with the ROWIP.

Conclusions on whether it is expedient to confirm the Order

26. I have concluded that it is expedient in the interests of the landowner to divert the existing path and find the new termination points to be substantially as convenient for the public. The resulting diversion will not be substantially less convenient to the public, and I am satisfied that it is expedient to confirm the Order having regard to its effect both on public enjoyment and land served by the existing route and proposed route. I, therefore, conclude that it is expedient to confirm the Order.

Overall Conclusions

27. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed.

Formal Decision

28. I confirm the Order.

Mr A Spencer-Peet

INSPECTOR

The Order plan

