



Order Decision

Site visit made on 14 May 2024

by **Charlotte Ditchburn BSc (Honours) MIPROW**

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

Decision date: 05 June 2024

Order Ref: ROW/3317780

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as The Shropshire Council (Footpath 14 (part) Parish of Pontesbury) Public Path Diversion Order 2022.
- The Order is dated 4 March 2022 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There were 2 objections outstanding when Shropshire 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 modifications as set out below in the Formal Decision.

Preliminary Matters

1. I undertook an unaccompanied site inspection during the morning of Tuesday 14 May 2024.
2. The Order Making Authority (OMA) have requested two minor modifications to the wording of the Order to reflect the correct grid reference of the proposed steps and amend the limitations recorded on the route. There would be no need for these modifications to be advertised further.
3. There were two objections to the order, one of which was subsequently partly withdrawn. There were two supporters to the order along with support for the order at the consultation stage including from Pontesbury Parish Council and a Local Member Councillor.
4. In this decision I have found it useful to refer to the various points annotated on the Order map. For ease of reference a copy of the map is attached hereto.

Main Issues

5. Section 119(6) of the 1980 Act 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.

6. 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 path must be taken into account, where applicable. 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

7. The Order is made in the interests of the owner of the land crossed by the footpath that the path in question should be diverted.
8. The existing route of Footpath 14 (FP14) runs southeast between Point A and Point B before meeting the continuation of the path.
9. The Order seeks to divert part of FP14 to run north through a woodland thicket before turning west on a field edge alignment through paddocks.
10. If confirmed, the order would benefit the landowner by removing the public right of way from Lower Mill, and associated kennels business. The current route runs across their access drive and through their garden. Clearly, having members of the public walking through the property and garden will have an adverse effect on the privacy of occupiers. Accordingly, it is not unreasonable for the landowners to want to divert the footpath to increase privacy, security, and general enjoyment of their property.
11. One objection questions the reasons for the Order to be made. Under section 119 of the 1980 Act, a landowner can apply to divert a public right of way if it is in their interests to do so, this Order is in the interests of the landowner to increase privacy and security of their property.
12. The parties were given the opportunity to comment on the Government guidance on diversion or extinguishment of public rights of way that pass through private dwellings, their curtilages and gardens, farmyards and industrial or commercial premises, August 2023. The OMA wrote that in applying the presumption guidance, the OMA had weighed the interests of the owner against the overall impact of the proposal on the public as a whole and were satisfied that it meets the legislative tests set out in Section 119 of the 1980 Act.

13. Having regard to the above and given that there is no evidence to the contrary, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

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

14. Point A represents the western termination point of the proposed route and is located on FP14, which continues beyond this point. Accordingly, the connection to the highway is unaffected by the diversion.
15. The eastern terminus of FP14 (Point B) is affected marginally in that the junction with the A488 would move approximately 25m to the northeast to Point C. The A488 continues beyond this point and the connection to the highway is thus unaffected.
16. One objector raises concerns about speeding and accidents near the proposed diversion. The OMA maintain that Point C was proposed following extensive consultation, to try and alleviate concerns about pedestrian safety, and this location has the support of both the local member and parish council. The OMA state that there are no known road traffic accidents recorded in the immediate vicinity of the order route in the last three years, this statement was supplemented by the A488 Pontesford Accident Data 2021 – 2023. Whilst the objector raises safety concerns due to the new termination point of the proposed route, there is good forward visibility and therefore drivers would have ample time to see pedestrians and vice versa.
17. At the time of my site visit I observed that there was a pinch point where the verge narrowed by the bus stop post before widening again as a tarmac footway. Although no dedicated pedestrian provision exists once the footpath diverges with the grass verge, the verge was adequately wide for pedestrians with a footway on the opposite side of the road which users may wish to cross over to at that point. The current termination point is at the centre of a tarmac driveway joining the A488, therefore the proposed termination point would reduce the conflict between users and vehicles, removing them from a T-junction onto the highway. Taking all of the above into account, I find the pedestrian safety arguments to be unconvincing. As the proposed and current terminations point are only 25m apart on the same highway I am satisfied that the proposed termination point is substantially as convenient to the public.
18. I conclude that the terminal points of the proposed route will remain connected to the same highways as the existing route and will be substantially as convenient to the public.

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

19. It is necessary to consider whether, in terms of convenience, matters such as the length of the proposed path, the difficulty of walking it and its purpose will render the path substantially less convenient to the public.
20. The existing route is 257m in length, whereas the proposed route is 307m. In my view, in this context, a 50m increase would not be substantially less convenient to the public. Whereas there is no recorded width for FP14, it is proposed that the

diverted footpath would have a recorded definitive width of two metres along its entire length.

21. The topography and gradient are similar, so pose no greater challenge to users than that of the current alignment. Whilst the surface would change from a stretch of tarmac and natural surface to purely natural surface, the proposed route is level and I do not consider there to be any negative effect on the ease of walking.
22. The current route has 3 sets of gates over the driveway between Points A and B, the proposed route would have no gates along it which would improve accessibility and a bridge would be installed over Pontesford Brook. There would be a small set of steps north of Point C to enhance accessibility up to the highway verge.
23. One objector raises flooding as an issue affecting the footbridge. The diversion would only come into force once the specified works have been completed to the satisfaction of the OMA. Given that the OMA supports the order, it is reasonable to presume they are satisfied there would be no undue burden on the public purse arising from the diversion. Further, I must proceed on the basis that the right of way would be maintained to the appropriate standard in the future. At the time of my site visit the area was not flooded, it is important to note that due to the topography of both routes being similar, if a flooding event were to occur both routes would be affected.
24. Accordingly, I am satisfied the proposed 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

25. The existing route is part of a network of public rights of way extending across the countryside. They provide an opportunity for shorter and longer walks, taking in the rural landscape. The proposed route would still have a similar direction of travel, similar views of the rural landscape; and would still give walkers a sense of walking through a heritage landscape with views of the past mill and converted Engine House as well as the remains of the mill race. Overall, I accept that, in the absence of other factors, the retention of the view of the Mill would carry significant weight. However, in this case there are other factors of significance relating to public enjoyment which I must weigh against the limitation of the view.
26. One objector states they have Equinophobia, therefore they would not be able to use the diversion route. The proposed route would be fenced off from the field containing horses, with an adequate width to prevent contact with them. It is not uncommon for public rights of way to pass through or alongside horse paddocks. In my judgement the presence of horses adjacent to the path is not relevant to the enjoyment of the path as a whole.
27. I have referred previously to the respective difficulties and merits of the surface of the existing and proposed routes. In my judgement these issues are just as relevant to the enjoyment as they are to the convenience of the user.
28. I must assess what effect the diversion would have on public enjoyment of the route as a whole. This requires me to make a qualitative judgement as to the value to the public of the view available from the existing route set against the proposed diversion into the paddocks.

29. The overall effect of the Order is substantially to relocate the affected section of FP14 a short distance to the north, taking it from a driveway and through a garden, to a field edge alignment. The alignment of FP14 away from the owner's house and garden would remove any uneasiness users might have about intruding into what is clearly a private space, regardless of their legal rights.
30. Taking account of all factors, I conclude that whilst the enjoyment for some may be reduced, on balance, public enjoyment of the route will not be negatively affected by the proposed diversion.

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

31. There is nothing to suggest that the proposed diversion will have any adverse effect on land served by the existing route, on third party land or on the land over which the diverted route would be created as they are both within the same ownership.

Rights of Way Improvement Plan (ROWIP)

32. No contradictory view has been expressed to that of the OMA that the ROWIP has been taken into consideration when preparing the proposed diversion. There is also no evidence to suggest that the proposed diversion would conflict with the ROWIP.

Conclusions on whether it is expedient to confirm the Order

33. I have concluded that it is expedient in the interests of the landowner to divert the path, and that the resulting diversion will not be substantially less convenient to the public. The proposed route is likely to be as enjoyable to use for most people, and there would be no adverse impact upon the land currently served by the footpath or the land which the diverted path would cross. I am satisfied that it is expedient to confirm the Order.

Other Matters

34. One of the objectors raises issues including: the current alignment having had gates locked, Public Rights of Way signage removed, misleading signage on the route, and intimidating behaviour from the landowners. Whilst I recognise these as genuine concerns, I must consider the current situation. The legal basis on which I must determine this case does not encompass consideration of such matters. If the Order were to be confirmed and such issues continued, then they should be referred to the Council to advise further upon. These are factors that I cannot take into account in reaching my decision.

Overall Conclusion

35. Having regard to the above, and all other matters raised in the written representations, I conclude that the Order should be confirmed with modifications to the wording of the Order, as referred to in paragraph 2 above.

Formal Decision

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

- Remove “through a pedestrian gate” from line four of Part 2 of the Schedule.
- Remove line two of Part 3 of the Schedule: “Pedestrian gate at GR SO 4107 0659 to BS 5709.”
- Replace “SO” with “SJ” in line three of Part 3 of the Schedule.
- Remove “through a pedestrian gate” from line 4 of Part 4 of the Schedule.
- Remove “Pedestrian Gate” label from the Order map.

Charlotte Ditchburn

INSPECTOR

